THE DECRETALS OF GREGORY IX (LIBER EXTRA)

Pope Gregory IX · 1234

In English

Our own English translation, made from Friedberg's edition of the Corpus Iuris Canonici (Leipzig, 1879–1881; vol. II, the Decretal collections, in the unaltered Graz reprint), with the Latin beside it.

Prepared for the Morals of the Church library, where the text may be read and searched online.

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Book I

Compilation of the Decretals of Lord Pope Gregory IX

Book One

Rex pacificus

Gregory,

bishop, servant of the servants of God, to his beloved sons, all the doctors and scholars dwelling at Bologna: greeting and apostolic blessing.

The peace-making King, in his merciful compassion, has ordained that his subjects should be chaste, peaceable, and honorable. But unbridled cupidity, reckless of itself, the rival of peace, the mother of lawsuits, the material of quarrels, daily generates so many new disputes that, unless justice by its own power restrained its attempts and unraveled its entangled questions, the abuse of litigants would extinguish the law of human fellowship, and, a bill of divorce having been given, concord would be exiled beyond the bounds of the world.

Therefore law is promulgated so that harmful appetite may be confined beneath the rule of law, through which the human race is instructed to live honorably, not to injure another, and to render to each person his right.

Indeed, for the common benefit—and especially that of students—we have taken care, through our beloved son Brother Raymond, our chaplain and penitentiary, to have brought together into one volume, with superfluities cut away, the various constitutions and decretal letters of our predecessors that were dispersed among different volumes. Some of these seemed to introduce confusion because of their excessive similarity, some because of contradiction, and others because of their prolixity. Still others circulated outside the aforesaid volumes and, as though uncertain, frequently wavered in judicial proceedings. We have added our own constitutions and decretal letters, through which certain matters that were doubtful in the earlier ones are clarified.

Wishing, therefore, that everyone should use this compilation alone in judicial proceedings and in the schools, we strictly prohibit anyone from presuming to make another without the special authority of the Apostolic See.

Book One

Title I: On the Supreme Trinity and the Catholic Faith

Chapter I

Latin source headnote (Abbas Siculus): It treats of the Trinity and its works; of faith and the articles of faith. In §3 it treats here of the ecclesiastical sacraments.

Innocent III, at the general council, chapter I.

We firmly believe and simply confess that there is one God alone, true, eternal, immeasurable and immutable, incomprehensible, omnipotent and ineffable: Father, Son, and Holy Spirit; three persons

indeed, but one essence, substance, or nature, altogether simple; the Father from no one, the Son *however* from the Father alone, and the Holy Spirit equally from both; without beginning, always, and without end; the Father begetting, the Son being born, and the Holy Spirit proceeding; consubstantial, coequal, co-omnipotent, and coeternal; the one principle of all things; creator of all things visible and invisible, spiritual and corporeal; who by his almighty power at once from the beginning of time created from nothing both creatures, the spiritual and the corporeal, namely the angelic and the mundane, and thereafter the human creature, constituted as though common from spirit and body. For the devil and the other demons were indeed created good in nature by God, but they themselves through themselves became evil. Man, however, sinned at the suggestion of the devil.

§1. This Holy Trinity, undivided according to its common essence and distinguished according to personal properties, first through Moses and the holy Prophets and his other servants, according to the most orderly disposition of times, gave saving doctrine to the human race.

§2. And at last the only-begotten Son of God, Jesus Christ, incarnate in common by the whole Trinity, conceived from Mary ever-Virgin with the cooperation of the Holy Spirit, having become true man, composed of a rational soul and human flesh, one person in two natures, demonstrated the way of life more clearly. Although according to his divinity he is immortal and impassible, the very same, according to his humanity, became passible and mortal. He also, for the salvation of the human race, suffered and died on the wood of the cross, descended to the lower regions, rose from the dead, and ascended into heaven; but he descended in soul and rose in flesh, and ascended equally in both, to come at the end of the age, to judge the living and the dead, and to render to each according to his works, to the reprobate as well as to the elect. All of them will rise with their own bodies, which they now bear, so that they may receive according to their works, whether these were good or evil: the former, with the devil, perpetual punishment; the latter, with Christ, everlasting glory.

§3. There is, moreover, one universal Church of the faithful, outside which no one at all is saved, in which Jesus Christ himself is the priest and the sacrifice. His body and blood are truly contained in the sacrament of the altar under the species of bread and wine, the bread having been transubstantiated into the body and the wine into the blood by divine power, so that, for the accomplishing of the mystery of unity, we ourselves may receive from what is his that which he himself received from what is ours. And certainly no one can confect this sacrament except a priest who has been duly ordained, according to the keys of the Church that Jesus Christ himself granted to the Apostles and their successors.

§4. The sacrament of baptism, which at the invocation of God and of the undivided Trinity—namely, of the Father, the Son, and the Holy Spirit—is consecrated in water, avails for salvation when duly conferred upon infants as well as adults, by anyone, in the form of the Church. And if, after receiving baptism, anyone has fallen into sin, he can always be restored through true penance.

§5. Not only virgins and the continent, but also the married, pleasing God through right faith and good work, merit to attain eternal blessedness.

Chapter II

Latin source headnote (Abbas Siculus): The Father, the Son, and the Holy Spirit, by a true union—not a collective union or one based upon likeness—are one essence, substance, or nature. This

substance is not begetting, begotten, or proceeding, because those acts are attributed not to the substance but to the persons; nor on this account is a quaternity inferred in the Trinity. Those holding the contrary are to be deemed heretics unless they recover from their error and submit themselves to the correction of the Apostolic See.

The same, at the same council.

We therefore condemn and reprove the little book or treatise that Abbot Joachim published against Master Peter Lombard concerning the unity or essence of the Trinity, calling him a heretic and a madman because in his *Sentences* he said: "For a certain supreme reality is the Father, the Son, and the Holy Spirit, and it is neither begetting, nor begotten, nor proceeding." From this [Joachim] asserts that [Peter] established in God not so much a trinity as a quaternity: namely, the three persons and that common essence as though it were a fourth. He openly declares that there is no reality that is the Father, the Son, and the Holy Spirit; and that there is no essence, substance, or nature, although he grants that the Father, the Son, and the Holy Spirit are one essence, one substance, and one nature.

But he acknowledges that a unity of this kind is not true and proper, but is, as it were, collective and based upon likeness: just as many men are called one people and many faithful one Church, according to the saying, "The multitude of believers had one heart and one soul"; and, "He who cleaves to God is one spirit with him." Likewise: "He who plants and he who waters are one"; and, "We are all one body in Christ." Again, in the Book of Kings: "My people and your people are one."

To establish this opinion of his, he especially adduces the statement that Christ makes concerning the faithful in the Gospel: "I will, Father, that they may be one in us, just as we are one, so that they may be perfected into one." For, as he says, Christ's faithful are not one—that is, some one reality common to all—but they are one in this manner: that is, one Church because of the unity of the catholic faith, and finally one kingdom because of the union of indissoluble charity. In the same way it is read in the canonical epistle of John the Apostle: "For there are three who give testimony in heaven: the Father, the Son, and the Holy Spirit, and these three are one"; and immediately it is added: "And there are three who give testimony on earth: the spirit, the water, and the blood, and these three are one," as is found in certain codices.

§1. We, however, with the holy *and universal* council approving, believe and confess with Peter [Lombard] that there is a certain one supreme reality, incomprehensible indeed and ineffable, which truly is the Father, the Son, and the Holy Spirit: three persons together and each one of them singly. And therefore in God there is only a trinity, not a quaternity, because each of the three persons is that reality—namely, the divine substance, essence, or nature—which alone is the principle of all things, besides which no other can be found.

And that reality is neither begetting, nor begotten, nor proceeding; rather, it is the Father who begets, the Son who is begotten, and the Holy Spirit who proceeds, so that distinctions are in the persons and unity in the nature. Although, therefore, the Father is one [person], the Son another, and the Holy Spirit another, nevertheless not another [thing]; rather, that which the Father is, the Son is, and the Holy Spirit is wholly the same, so that according to the orthodox and catholic faith they are believed to be consubstantial.

For the Father, by begetting the Son from eternity, gave his substance to him, according to what [the Son] himself bears witness: "What the Father gave me is greater than all things." It cannot be said that he gave him part of his substance and retained part for himself, since the Father's substance is indivisible, being altogether simple. Nor can it be said that the Father, in begetting, transferred his substance into the Son—as though he gave it to the Son in such a way that he did not retain it for himself—for otherwise it would have ceased to be substance.

It is therefore evident that, without any diminution, the Son by being born received the substance of the Father; and thus the Father and the Son have the same substance, and so the Father and the Son are the same reality, as is also the Holy Spirit proceeding from both.

Therefore, when the Truth prays to the Father for his faithful, saying, "I will that they may be one in us, just as we are one," this term "one," when applied to the faithful, is taken so that a union of charity in grace is understood; but when applied to the divine persons, so that a unity of identity in nature is recognized. In the same way the Truth says elsewhere: "Be perfect, just as your heavenly Father is perfect," as though he were to say more plainly: Be perfect with the perfection of grace, just as your heavenly Father is perfect with the perfection of nature. Each, that is, in its own manner; because between Creator and creature no similarity can be observed so great that a greater dissimilarity must not be observed between them.

§2. If anyone, therefore, presumes to defend or approve the opinion or doctrine of the aforesaid Joachim in this matter, let him be avoided by all as a heretic.

Nevertheless, we do not wish on this account to derogate in any respect from the monastery of Fiore, of which Joachim himself was the founder, because there is there both a regular institution and a salutary observance; especially since Joachim himself ordered all his writings to be submitted to us for the judgment of the Apostolic See, to be approved or even corrected. He dictated a letter that he signed with his own hand, in which he firmly confesses that he holds that faith which the Roman Church holds, which, by the Lord's ordering, is the mother and teacher of all the faithful.

§3. We also reprove and condemn the most perverse dogma of the impious Amalric, whose mind the father of lies has so blinded that his doctrine is to be judged not so much heretical as insane.

Title II: On Constitutions

Chapter I

Latin source headnote: The statutes of canon law bind everyone, and judicial proceedings, both in pronouncing and in deciding judgments, are to be regulated according to their tenor.

From the Council of Meaux.

The statutes of the canons are to be observed by everyone [without prejudice], and no one in ecclesiastical actions or judgments is to be guided by his own judgment, but by their authority.

Chapter II

Latin source headnote: A constitution has regard to future matters, and not to past ones.

Gregory, in the Register.

Recognizing [what zeal for Christian slaves, whom the Jews buy from the regions of Gaul, has inflamed your fraternity, we indicate that your solicitude has so pleased us that our deliberation also judged that they should be restrained from trade of this kind. But, when Basil the Hebrew came with other Jews, we learned that the purchase of these slaves is imposed upon them by various judges of the commonwealth, and that it happens that pagans and Christians alike are purchased. Hence it was necessary so to dispose the matter by a careful ordinance that neither those issuing the mandates should be frustrated nor those who say that they obey against their will should unjustly sustain any losses. Accordingly, let your fraternity provide with vigilant solicitude that this be observed and maintained: when they return from the aforesaid province, any Christian slaves whom they happen to bring are either to be delivered to those who commissioned them or certainly sold to Christian purchasers within the fortieth day; and, when this number of days has elapsed, none is to remain with them in any manner. But if some of those same slaves should perhaps incur such illness that they cannot be sold within the appointed days, solicitude must be employed so that, when they have been restored to their former health, they are likewise disposed of by every means, because] it is not fitting that a matter which is free from fault be made the occasion of loss. Whenever something new is established, it is customary for it to impose a rule upon future matters in such a way that it does not consign the past to numerous losses. [If any slaves from purchases of the past year have remained with them, or have recently been taken from them by you, while they are in your keeping, let them have permission to alienate them,] lest, before the prohibition, they be able in ignorance to incur a loss which, after they have been prohibited, it is fitting for them to sustain. [It has been reported, etc.]

Chapter III

Latin source headnote: The authority to make and to change canons belongs to the vicar of Christ; and what is established concerning one of two things that are connected is to be extended also to the other.

Augustine, on the Epistle to the Hebrews.

"When the priesthood has been transferred, it is necessary that a transfer of the law also take place." For, since both were given at the same time, by the same one, and under the same pledge, it is necessary that what is said of the one be understood of the other.

Chapter IV

Latin source headnote: Everything prohibited by law is a sin, as is everything that follows from it. This is what it says.

The same, on the Epistle to the Romans.

"For I did not know concupiscence, etc." The Apostle chose this as a general matter from which all evils arise. The law, therefore, which, while prohibiting this, prohibits all evils, is good.

Chapter V

Latin source headnote: Decretal constitutions are to be preferred to the judgments of individuals.

Jerome, on Proverbs.

"Do not lean upon your own prudence." He leans upon his own prudence who prefers to the decrees of the Fathers those things which seem to him ought to be done or said.

Chapter VI

Latin source headnote: A constitution of a college made to the detriment of some and the advantage of others is not valid when a reasonable cause is lacking. Or thus: Without a reasonable cause, the greater part of a chapter cannot abolish a custom by fostering its private advantage.

Innocent III to the Archbishop of Sens and the Bishop of Troyes.

Since we are all one body in Christ, while individually we are members one of another, the greater ought not to envy the lesser, nor the elder the younger; rather, all who serve the one Lord in one church should rejoice in equal liberty, since weight and weight, measure and measure, are both abominable before God, and the householder of the Gospel rewarded with equal pay the first laborers in his vineyard and the last.

But it has come to our hearing that our beloved sons, the canons of Troyes, intent upon their own advantages and envious of the advancement of others, have made a new constitution in the church of Troyes: that, while they themselves are to receive their revenues in full both when present and when absent, those who were instituted in the same church after that constitution, or who will be instituted in the future, are not to receive revenues from it in their absence, but only when they have been resident there—even though, according to the custom of the church of Troyes, all have customarily been equal in this matter. They also established that, although vineyards are annexed to the individual prebends, with the canons themselves possessing their own vineyards while they live, the vineyards of those who die are not to pass to their successors, but their proceeds are to be divided among the individual canons.

Since, therefore, each person ought himself to use that rule of law which he establishes for another, and the authority of the wise man says, "Submit to the law which you yourself have enacted," by apostolic writings we command your fraternity to make the older canons equal to the younger, and the younger equal to the older, in the receipt of the fruits both of the prebends and of the vineyards, according to the former custom observed until the time of the aforesaid constitution, or according to a reasonable institution to be observed in the future; striking with ecclesiastical constraint any who decide to resist. [No letters, etc. Given, etc. 1198.]

Chapter VII

Latin source headnote: A constitution of laymen does not bind a church or its goods.

The same to the Bishop of Trent.

Things attempted to the prejudice of churches and ecclesiastical men ought not to acquire firmness; rather, they ought to be invalidated for the indemnity of the churches.

Indeed, it has come to our hearing that the citizens of Treviso and Conegliano, rashly usurping for themselves—and would that it were for themselves alone—the jurisdiction of making constitutions, cloak impiety under the name of piety; and, while they strive to show favor to certain persons out of another's property, they are burdensome to churches and ecclesiastical men. For, as we have learned, they established that if anyone credibly alleges that he is tending toward poverty, he is to have free

power to alienate a fief which he holds from a church or from others, through officials appointed for this purpose by the citizens of Treviso and Conegliano; nor is the purchaser bound to answer to the former lord except only for a sixth part of the price, which he will tender to him if he wishes to receive it. By this the rights of the Church are injured not a little.

Wishing, therefore, to take thought for the indemnity of churches and to make provision against burdens of this kind, by the authority of the present writings we quash both this constitution and the sales of ecclesiastical fiefs made without the lawful assent of ecclesiastical persons on the occasion of this constitution—or, more truly, this destitution or destruction—and decree that they have no force. [Let no one therefore, etc. Given at the Lateran, on the tenth day before the Kalends of April, 1199.]

Chapter VIII

Latin source headnote: A dignity removed from a church by a statute of the chapter confirmed by the Pope is not thereafter deemed vacant unless the statute has been revoked by a contrary act.

The same.

When our beloved sons, the archdeacon of Toul and G., proctor of the chapter of Toul, had approached the Apostolic See, we granted them our venerable brother Hugh, Bishop of Ostia, as auditor. In his presence the aforesaid archdeacon proposed that, when formerly certain canons of Toul had intimated to our ears that the offices of primicerius and scholasticus in the church of Toul had been vacant for so long that the grant of those offices had devolved upon us, we commanded our beloved sons, the abbots of Haute-Seille and Beaupré and the dean of the monastery of La Colombe, to inquire into the truth of the matter; and, if it were established that those offices had been vacant for so long that, according to the statutes of the Lateran Council, the grant of them had devolved upon us, they were in our stead to institute suitable persons from the church of Toul or elsewhere in those offices and cause them to possess the same peaceably.

[Those judges, executing the apostolic mandate, cited the parties to their presence. On the appointed day, when the said Master W. and F. appeared before them, John the priest presented himself in their sight with letters of the chapter of Toul, in which that chapter offered as its excuse that, because of the Duke of Lorraine, who had declared himself their enemy, they could not approach the place appointed by those judges without danger to property and persons. The said priest, wishing to confirm this very thing by his own oath, requested a place to which the canons of Toul could safely come. After the said master and priest had litigated over this for some time, that priest, when required to take the oath which he had earlier offered, refused; and, uttering a declaration of appeal, he presented letters of the chapter in which he had been appointed proctor solely for the purpose of appealing.

But the aforesaid judges, regarding both the excuses proposed by that priest and the appeal interposed as dilatory, on the advice of prudent men received the witnesses whom the said master and F. wished to introduce, and appointed another day for the often-mentioned chapter at Saint-Evre. When they did not take care to appear in judgment on that day either, the judges solemnly published the depositions; and, since it was established before them that the office of primicerius in the church of Toul had been vacant for so long that the grant of it pertained to us, in our stead they conferred it upon the aforesaid S., the archdeacon. The same archdeacon asked that this grant be confirmed by apostolic authority.

The said G., proctor of the chapter, answered to the contrary that this grant and the proceedings of the aforesaid judges deserved to be rescinded, inasmuch as those judges had proceeded after an appeal to us had lawfully been interposed on account of various grievances. For in the first citation they had summoned the chapter itself by a peremptory edict; and, although the chapter thereafter sent its own messenger to their presence, and although that messenger diligently requested that a safe place be assigned to the parties, alleging that because of dangers on the roads and deadly ambushes the chapter could not come to the place appointed or send sufficient representatives, nevertheless the said judges disdained to admit this excuse. For that reason the messenger, as he had been commanded, had recourse to the protection of an appeal.

The said proctor added that the proceedings of those judges were to be adjudged invalid for this reason also: they proceeded to the reckoning of the sentence although the issue had by no means been joined. On the part of the archdeacon it was replied against this that no deference at all was owed to this appeal, since it had not been made for lawful reasons but only for delay. For, although the chapter had been summoned by lawful citations, it sent a mere messenger, not a suitable representative. After he alleged the chapter's excuse and offered his own oath concerning it, when required he later refused to take it. Since, therefore, the excuse proposed by that messenger rightly seemed deceptive, the appeal interposed upon it was rightly to be rejected, especially since the messenger presented letters of the chapter in which it was expressly contained that he had been sent solely to make an appeal.

The same party answered that neither could it prejudice the matter that the said judges proceeded when the issue had not been joined, since they had been commissioned not to adjudicate a cause but only to investigate the truth; for this reason the solemnity of judicial procedure was not to be observed in the investigation itself. To this the chapter's party answered that, although the full solemnity of law is not observed in certain investigations, nevertheless the order of law ought to have been observed in an investigation of this kind, since certain persons are peaceable possessors of the possessions and revenues which formerly pertained to the office of primicerius, and they ought not and could not have been despoiled of them without the order of law. Moreover, even if the said judges could have proceeded without adjudicating the cause, they nevertheless chose instead to adjudicate it solemnly, summoning the canons of Toul as a party to their judgment.]

It was further alleged on behalf of the chapter that the rescript obtained for the aforesaid judges had been obtained by a false suggestion. For by the common assent and unanimous will of the canons of Toul it had been established that the dignity of primicerius should no longer exist in the aforesaid church, the proceeds and possessions of that office having been distributed among the canons themselves; and that institution had thereafter been confirmed by Pope Alexander, our predecessor of good memory. For this reason it plainly appears that the office of primicerius had not been vacant for so long, as had been suggested to us by a false representation.

[Against this the archdeacon's party answered thus: because that dignity had been instituted there for the public and common honor of the church of Toul, it could not be abolished in that church without the authority of the Apostolic See. Nor could the confirmation obtained for so unlawful a constitution give firmness to what was invalid by law itself. Moreover, after all these things the same canons jointly elected Archdeacon Terricus as primicerius, and he was thereafter confirmed by apostolic authority; for this reason they appear not only tacitly to have renounced the confirmation

they had obtained but also to have revoked their own institution. But to this the chapter's party replied that what was done concerning T. could not prejudice them, since he usurped the office of primicerius for himself not through canonical election but rather through intrusion.]

Therefore, by apostolic writings we command your discretion, after a more diligent inquiry into the truth, that if it is established before you that the canons of Toul jointly decreed that the office of primicerius should no longer exist in the church of Toul, and that the statute itself was thereafter confirmed, as is said, by authority of the Apostolic See, you are to cause it to remain in its force, unless the said canons afterward acted contrary to it, namely by electing someone as primicerius. [But if it has been customary, etc. Given at Rome, at Saint Peter's, on the Kalends of February, in the ninth year, 1207.]

Chapter IX

Latin source headnote: Notwithstanding a fixed number of canons, even one confirmed by the Pope, provision is to be made from the surplus revenues for those received beyond that number, especially if they were received voluntarily by the canons.

The same to the Bishop of Chioggia.

When Martin, canon of Ferrara, and F., W., B., and G., proctors of the canons of Ferrara, and Master G., proctor of the chapter of Ferrara, had approached the Apostolic See concerning the dispute which they had with one another over prebends and revenues, we granted them our beloved son, the cardinal-deacon of Santa Maria in Cosmedin, as auditor. Before him the said M., for himself and his four associates, proposed that the canons of Ferrara, so that their revenues might be increased the more as the proceeds of the church which had customarily been divided among many should fall to the use of a few, established in the same church, against ancient custom, only fourteen prebends, apart from what they assigned to the common table. Later, however, voluntarily acting contrary to that very constitution, they received the said five as canons, assigning them no prebends. And although their revenues had been increased not a little, they had not yet been willing to make provision for them from the surplus revenues.

But on the opposing side it was proposed that, long ago, with the common will both of the canons and of the then Bishop of Ferrara, the number of fourteen prebends was instituted in the church of Ferrara after provident deliberation and strengthened by the protection of the Apostolic See. [At length], when one prebend in the same church had become vacant, at the great insistence of certain persons they received two men to it, and later, at the prayers of our venerable brother the Bishop of Ferrara, they received the said M. and another man as canons without prejudice to the said constitution, on the condition that these canons should receive nothing from the canonry until the first two had fully obtained prebends. And when, through the industry of the canons, it had been procured that greater revenues be paid to them from possessions which the [same] church had possessed for a long time, they jointly assigned the surplus revenues to the common table, which had been insufficient. The said five later asked that those revenues be assigned to them as a benefice, contrary to the constitution of the chapter. Because, as that cardinal asserted, full certainty concerning these matters could not be furnished to us, we considered that the cause itself should be committed to your examination.

We command you, therefore, since in the aforesaid constitution and confirmation of the Apostolic See there either was, or ought to have been, as is customary, the express clause, "unless the resources of the church should increase to such an extent that they could competently suffice for more persons," and since the same canons, in derogation of their own constitution, received four beyond the established number for prebends that would become vacant, while the older canons were receiving their customary prebends in full, that, appeal being removed, you cause the surplus revenues to be assigned to the aforesaid canons. This is nevertheless to be done so that, if from those revenues they can obtain prebends equal to the others, what remains over is to be converted to the common uses of the canons, as they had earlier established, or otherwise, as may seem better; all things whatsoever that, after the dispute was initiated before the Bishop of Ferrara, were altered by either party to the prejudice of the other concerning the prebends or possessions being revoked as void. [No letters, etc. Given at Rome, at Saint Peter's, on the twelfth day before the Kalends of May, 1198.]

Chapter X

Latin source headnote: A general statute of laymen does not extend to churches or ecclesiastical persons, or to their goods, to their prejudice; nor does a special statute, even if it concerns their advantage and favor. This states the point so far as its meaning is concerned. Abbas Siculus.

The same to the Abbot and Convent of Saint Sylvester.

In the time of the said senator B. Carosomi, the church of Santa Maria in Via Lata brought a claim before Judge L. against I. de Atteia, who was said to be detaining certain of its possessions contrary to justice. In that proceeding the syndic of your monastery stood with the aforesaid I. de Atteia, and certain monks were produced by him as witnesses. But the judge, having heard the arguments of the parties, pronounced a sentence of absolution for the same John; from his sentence the other party issued a declaration of appeal.

When a dispute arose over this, the victorious party proposed that an appeal could not have been taken, since the said L. had been chosen not as a judge but as an arbitrator. The defeated party, on the contrary, asserted that, since the arbitration—which binds the parties only through fear of a penalty, and no penalty had been included in the aforesaid arbitration—had been repudiated, an appeal could rightly have been taken, and all the more so if it had been a judicial proceeding. When the dispute concerning this was therefore brought before the already-mentioned B. Carosomi, he delegated the cause of the appeal to S., the chief of the judges. In his presence, with the parties appearing, the said John de Atteia proposed that he ought not to be sued, since he did not possess what the other party was seeking; rather, the monastery of Saint Sylvester possessed the thing claimed.

Now the said B. Carosomi had issued a certain statute, alike approved and accepted by the Roman people, providing that, if anyone transferred to another a thing claimed from him after joinder of issue, possession was to be given to the claimant, and the other party was to become a claimant instead of a possessor. Since the same I., after joinder of issue, had presumed to transfer the thing itself to the monastery, B. assigned possession of the thing claimed to the aforesaid church. But because the said I. had rendered an annual rent to the monastery of Saint Sylvester from those possessions, B. added that the same was to be done by the church of Santa Maria until the ownership

of the estate should be adjudicated; yet the payment which was made [of the rent] was to prejudice in no respect the right of the church of Santa Maria in Via Lata.

[The church of Santa Maria possessed this property undisturbed until the time of John Pierleoni, senator of the City. He graciously admitted the petition of your monastery and committed the same cause to Judge R., who, having heard the matters proposed on either side, pronounced sentence for the monastery itself, renewing what the aforesaid B. Carosomi had decreed against it. Because the church of Santa Maria complained that it had been gravely injured by this sentence, it too petitioned the aforesaid senator, who committed the cause to Judge R. for adjudication. And because the senator's jurisdiction was shortly to expire, his successors, the senators already elected, were petitioned concerning the same cause, and the cause itself was delegated by them to the same judge. The judge, adjudicating by delegation both from the former senator and from the new senators, approved what had been decreed by the already-mentioned B. and restored the aforesaid possession to the church of Santa Maria.

And although the senate had nine councillors, the sentence was entrusted for execution to eight of them. But one of them, who was also the nephew of the abbot of Saint Sylvester, supported by the favor of certain senators, took the possession violently from the church of Santa Maria and gave it to the aforesaid monastery. From this, as the quarrel increased, matters proceeded as far as the clash of arms. Lest something worse occur, Pope C., our predecessor of good memory, recalled the entire affair to his own solicitude. And because the time for gathering the fruits was imminent, he ordered the fruits to be placed in sequestration with the tenants, so that if either party presumed to inflict any violence concerning them, it would suffer loss in its cause. He committed the same cause to our venerable brothers G., Bishop of Porto, and I., now Bishop of Albano but then Bishop of Tusculum of the title of Saint Clement, and to our beloved son G., cardinal-deacon of Sant'Angelo.

When the parties appeared before them, it was objected on behalf of the church of Santa Maria against your monastery that your party had committed violence with respect to the fruits to be sequestered. And when witnesses had been produced by both sides concerning this, because the violence was not clearly proved and was said to have been committed with respect to half a *ruglus* of barley, and because the abbot had nevertheless forbidden that the wrong of an individual should redound to the detriment of the church, after restitution of the barley it was provided that the cause should proceed to the question of possession. This question was disputed for a considerable time before those same men, after witnesses had been produced and the depositions published.

Thereafter, following the death of our aforesaid predecessor, with the parties appearing in our presence, the church, etc. (compare chapter 4, On a Suit Pending, II.16.) And because in the course of time some of the senators had confirmed the sentence for the monastery and others the one rendered for the church, we, etc. (compare chapter 4 cited above.) Since, therefore, it was established before us, and we gathered from the parties' own confession, that one of the councillors, acting contrary in fact—because he could not do so in law—to the sentence entrusted for execution by the will of eight, violently despoiled the church itself of its possession, and considering nevertheless that even an unjust possessor who has been violently ejected is to be aided by the remedy of restitution, we decreed that the despoiled church was to be restored to the state in which it had been at the time the violence was perpetrated. But because (etc.; compare chapter 4 cited above.)]

And because your often-mentioned monastery complained that it had been despoiled contrary to justice by the aforesaid B. Carosomi, and humbly requested to be restored through our office, it asserted on many grounds that his statute was of no validity.

[For, since the often-mentioned B. had intruded himself into the senatorial dignity and had not had the favor of the Apostolic See, to which the institution of senators belongs, he could not issue a statute that would be valid. Even if he had been lawfully instituted, his statute, although it would bind those subject to him, would nevertheless in no way bind churches, especially since it was contrary to the civil law. That law establishes that another penalty is to be imposed upon those who transfer things in litigation, making this distinction between contracting parties: if anyone, knowingly, has entered into donations, sales, or other contracts, he is compelled not only to redeem the thing but also loses its price—not so that it should fall as profit to the alienator, by whom another equal amount must also be paid to the treasury. But if anyone has purchased a thing in litigation in ignorance, or has received it through another kind of contract, then, when the alienation of the thing has been made void, he will receive its price with an additional third part; and instruments drawn up concerning contracts of this kind are also to have no force. The same constitution, however, expressly excepts from the aforesaid penalties those who have given or received things of this kind by way of dowry, antenuptial gift, transaction, or division of hereditary property, or by reason of a legacy or trust.

Even if the statute could bind churches, the monastery had by no means fallen within that constitution, since the aforesaid I. had transferred no possession at all to it. As a tenant he had held those lands and possessed them not in his own name but in the name of the monastery. Even if he had made such a transfer, because he had first been sued by the monastery before being sued by the church, and because he restored the aforesaid things both through arbitration and likewise by right of a transaction—by which, after joinder of issue, a thing may be transferred to another without the penalty attaching to a contract concerning a matter in litigation—he would in no way have fallen within the aforesaid statute. Indeed, even if he had acted contrary to that statute, because the monastery had been despoiled of its possession although it had neither been sued nor confessed in court nor been convicted, it insistently sought its restitution, since the other party detained it without cause, or at least without a just cause.

The administrator of Santa Maria strove to undermine these arguments in many ways. For, although the said B. had not had the favor of the Apostolic See around the beginning of his prelacy, nevertheless, because he was subsequently received by it and ratification relates back, he was to be regarded just as if he had been lawfully instituted from the beginning. He could not be avoided by the monastery as an extraneous judge, since it is neither new nor unusual that, when clergy are plaintiff and defendant, civil causes in the City are prosecuted before judges instituted by the Apostolic See by delegation of senators who have jurisdiction from it. Hence they are understood to litigate not in another's forum but in the proper forum of the Roman Pontiff, by whose authority the things decreed by senators or judges of this kind appear to obtain effect.

Even if the senatorial forum had been wholly foreign to the monastery, nevertheless, because the administrator of the said monastery, before Judge L.—delegated by the aforesaid B. in the dispute between the church of Santa Maria and the said I. de Atteia—stood with I. himself and defended him at law, the monastery could no longer decline that judge's jurisdiction. The statute of B. himself, of

which mention has so often been made, was not contrary to law but rather consonant with it (since it is also provided in canon law that a thing placed in litigation is not to be transferred to another person). It ought to extend not only to possessors but also to those who could be sued by virtue at least of their detention of any thing, such as even temporary tenants are known to be. For perpetual tenants, having at least beneficial possession, can both be sued and transfer to another what they have, as the aforesaid I. had done. Neither the aforesaid arbitration nor the transaction could excuse his act, since they had been undertaken with guile and fraud. For the arbitrator to whom the matter was committed by the parties was said to have been a kinsman of I. himself and a feudal tenant of the monastery, and to have done nothing in public but everything in secret, although arbitrations were introduced after the pattern of judicial proceedings. He also compelled the parties to make a settlement, as appears from the rescript of settlement. And since the parties had not submitted the matter of a settlement to arbitration—a settlement being a matter not of necessity but rather of free will—the administrator asserted that, guile having now been proved as though from manifest contrivances, the settlement was wholly ineffective.

The church also said that the monastery's petition was to be repelled for this reason: because the church had obtained the possession itself by the authority of the praetor without guile or fault of its own, and through this a right had been acquired by it, your monastery ought no longer to be heard concerning the possessory action, while the church was prepared to answer it in the petitory action.]

These and similar matters having therefore been prudently alleged by the parties in the presence of us and our brothers, we, considering that no authority over churches and ecclesiastical persons has been attributed to laymen, even religious ones—whom there awaits the necessity of obeying, not authority to command—and that, if anything is established by them on their own initiative which even has regard to the advantage and favor of churches, it possesses no firmness unless it has been approved by the Church; whence the statute of Basil concerning the non-alienation of the rural or urban estates, vessels, and ornaments of churches was rejected especially for this reason, that it was not strengthened by the authority of the Roman Pontiff; lest it pass into a precedent for presuming similar things, we wholly revoke as void what had been done by the senator to the prejudice of the monastery, although the monastery had neither been sued, nor had confessed, nor even been convicted, and by definitive sentence determine that the same possessions are to be restored to it, and that the possessions themselves, etc. [Compare chapter 3, On a Suit Pending, II.16. Given at the Lateran, on the fifth day before the Kalends of December, 1199.]

Chapter XI

Latin source headnote: A penalty imposed simply for contumacy is, in a doubtful case, understood to be temporary and not perpetual.

The same to all the Doctors residing at Paris.

We have learned from the letters of your devotion that, when certain modern doctors of the liberal arts departed from the footsteps of their predecessors especially in three matters—namely, in dishonorable dress, in the order of lectures and disputations not being observed, and in the pious custom of celebrating the obsequies of deceased clerics now being almost wholly omitted through negligence—you, wishing to take thought for your own honor, unanimously chose eight sworn men from among yourselves for this purpose: that, concerning the said matters, on the advice of prudent

men they should in good faith establish what would be expedient and honorable, binding you all by an intervening oath to observe it thereafter. The sole exception was Master G., who, refusing and fearing to swear, offered only a surety bond for himself.

Furthermore, as a precaution, after faith had been pledged by you, it was immediately established that if any of the masters decided to resist the others and, after being admonished a first, second, or third time, disdained within three days to obey the community of masters, he should from then on be deprived of the benefit of their fellowship in academic functions. Some of you acknowledge that they understood this last provision without qualification; others, "unless he made satisfaction"; and some, "unless he obtained through us that he be admitted by the others."

But when the aforesaid Master G., after being required, did not obey the community within three days, in accordance with your agreement he was from that time regarded by you as excluded. After he later offered to make fitting satisfaction, by an intervening oath he submitted the matter to four of you, promising that for the good of peace he would alike hold their determination pleasing and ratified. They, having employed the counsel of wise men, jointly promulgated their determination: by virtue of the oath taken, they prohibited the aforesaid master from thereafter resisting the community of masters in lawful matters, and enjoined him to remain in the state in which he then was until, either by himself or through his proctor, he obtained from the Apostolic See that he could be admitted by the other masters, with honor safeguarded in all things.

Hence you humbly petitioned us that, out of the benignity of the Apostolic See, we should cause the same master—a provident and honorable man, who, as a son of obedience, humbly accepted and patiently observes what the aforesaid four enjoined upon him—to be restored to the fellowship of the masters. From the foregoing we therefore understand that the same master was commanded to remain in the state in which he then was until he should be restored to the fellowship of the masters by mandate of the Apostolic See, and that he is prepared to furnish fitting satisfaction concerning the foregoing matters.

Although it was established by you after faith had been pledged that, if any of the masters decided to resist the ordinance of their community and, after being admonished a first, second, or third time, disdained within three days to obey the community of masters, he should from then on be deprived of the benefit of their fellowship in academic functions—and for this reason Master G. was deprived of their fellowship—nevertheless, because it was not established that a deprivation of this kind should endure in perpetuity, and because it is the rule both of canon law and of our custom that one who is deprived of fellowship on account of contumacy obtains restoration when he furnishes fitting satisfaction, by the authority of the present writings we command your community to admit the aforesaid master, who now takes care humbly to obey your statutes, to the association of your fellowship in academic functions.

Chapter XII

Latin source headnote (Abbas Siculus): Canons cannot without cause restrict the number of canons or prebends.

Honorius III to the Bishop and Cantor of Chalon.

It was proposed before us on behalf of our venerable brother the Bishop of Autun that the canons of Autun, intent upon their own advantages, have restricted the number of prebends established from ancient times in the church of Autun, although its revenues have not been diminished, so that they may thus abound more in temporal things, while under such a pretext they strive to turn to the increase of the prebends those things from which the customary number of canons can be sustained. And, in protection of their act, they are said to have obtained from us letters of confirmation concerning this in the common form.

§1. Therefore, not wishing divine worship to be diminished in that church by an occasion of this kind, but rather to be increased, we command your discretion that, if the truth supports the foregoing statements, you cause the ancient number to be observed by our authority. Notwithstanding any constitution made concerning this by the canons themselves, or any confirmation obtained by those same canons from us, you are, after removing the obstacle of appeal, to confer upon suitable persons, with the counsel of the same bishop, the prebends which you find to have become vacant in the aforesaid church since the time of the last statute.

Chapter XIII

Latin source headnote: A constitution has regard to future matters and not to past ones, unless provision is made in it concerning the past.

Gregory IX to the Archpriest of Santa Maria Maggiore in the City.

Because a constitution of the Apostolic See binds everyone and ought to contain nothing obscure or ambiguous, we declare that the constitution which we recently issued concerning the greater [members] being preferred in the receipt of a portion, and customary services being rendered by the lesser [members], extends not to past matters but only to future ones, since it is certain that laws and constitutions give a rule to future transactions and are not drawn back to past acts, unless provision is expressly made in them concerning the past.

Title III: On Rescripts

Chapter I

Latin source headnote: A special rescript, even one making no mention of a general privilege obtained according to the common law, prevails over that privilege. This it says according to the more common understanding.

Alexander III to the Archbishop of Sens.

Just as the Roman *Church is, by the Lord's ordering, the mother and teacher of all churches, so also we, who, although unworthy, preside over that Church by the providence of the heavenly disposition,* [*and*] *insofar as the Lord shall supply to us, are compelled to answer the consultations of individuals and, by the providence of apostolic circumspection, to clarify the things which appear doubtful. Indeed,* it has been asked of us on your behalf *whether,* if a certain cause *between certain persons* is committed to delegated judges with the remedy of appeal removed, and the other party is fortified by apostolic letters by which it is generally granted to him that he may freely appeal, *if* he should break forth into a declaration of appeal, deference ought to be given to his appeal in that same cause.

To this inquiry of yours, therefore, we respond *by the present letters* in this manner: his appeal in this matter ought not to be admitted after the cause has been committed to judges with appeal removed, because a special mandate derogates from a general one. [*Moreover, etc.; compare chapter* 5, *On the Office of a Delegated Judge, I.*29.]

Chapter II

Latin source headnote: In an apostolic rescript the clause "if the petitions rest upon truth" is implied. And if a rescript prohibits cognizance of the cause, it is suspect of falsehood.

The same to the Archbishop of Canterbury.

It has been intimated to our ears on behalf of our *venerable brother*, the Bishop of Coventry, that, while lawfully adjudicating the cause which is pending between the clerics G. and F. concerning the prebend of Novals, in accordance with the tenor of our letters—which contained that, if it were established that F. himself had been convicted of perjury and had renounced that prebend forever, he was, *appeal ceasing*, to be removed from it—when this had been adjudicated and proved, he adjudged that same prebend [to G.]. F. himself broke forth into a declaration of appeal and brought back to you our letters directing you to restore the prebend to him peremptorily and without cognizance of the cause, *and, with appeal ceasing, to deprive the bishop who had despoiled him of the prebend after the appeal of authority to confer a benefice upon anyone, until he should come to the Apostolic See, in person, through a messenger, or by his letters, to make satisfaction for so great an excess; and to bind the aforesaid G., if he presumed to molest F. in the said prebend, with the bond of excommunication until worthy satisfaction*.

But because we do not believe *that we* wrote so peremptorily, *and, if we did write in such a manner, this occurred from excessive occupation*, and because in letters of this kind this condition is to be understood even if it is not appended—"if the petitions rest upon truth"—*by apostolic writings, commanding*, we order your fraternity, after inspecting the letters which we directed to the aforesaid bishop, that if you find that we wrote to him in the aforesaid manner, *and appeal was prohibited in our letters*, and no mention of the earlier letters was made in the letters which the aforesaid F. brought back *to you*, you are, *every occasion and appeal ceasing*, to confirm the sentence of the aforesaid bishop and to compel the often-mentioned F. to come into our presence with our letters which he brought to you.

Chapter III

Latin source headnote: If, in a second rescript obtained by an adversary, no mention is made of the first, the first is valid and not the second; otherwise, the second is valid. And if the first was obtained by the common consent of the parties, a second obtained by one party while this was concealed is not valid.

The same to the Bishop of Winchester.

Furthermore, if anyone has obtained from the Apostolic See letters *of commission to judges* concerning a cause, and his adversary afterward obtains the same cause to be committed to others without mention being made of the earlier commission, the first judges may proceed to the decision of the cause, and the second letters obtain no firmness of any force. But if mention of the earlier commission is made in the second letters, the aforesaid cause is removed from the judgment of the first judges, since those same letters were not obtained with the truth suppressed.

But if a cause is committed with the assent of the parties, and in the course of time, or even immediately, either party, without the other's knowledge, obtains the cause itself to be delegated to another judge while the *making* of the earlier commission is concealed, the person who by such guile or fraud compelled his adversary to labor ought, not undeservedly, to be condemned to pay that adversary's expenses.

Chapter IV

Latin source headnote: If the Pope commands in a rescript that inquiry be made alternatively concerning two matters, proof of either is sufficient for obtaining the specified effect.

The same to the Archbishop of York.

Among your other consultations, [*this*] was proposed before us: what you ought to hold when certain things are commanded under a disjunction, of which one is true and the other false—for example, if it is proposed that a certain man is the son of a priest and was begotten during his priesthood, who most recently ministered in a certain church, or that he occupied the same church unlawfully. To this question we respond in this manner: *it is fitting* that, whichever of these matters is established before the judge, the aforesaid church ought to be adjudged to that person. And the same is to be observed in similar cases. *Indeed, if, etc.* (*Compare chapter* 8, *On the Office of a Delegated Judge, I.*29.)

Chapter V

Latin source headnote: The person to whom a papal rescript is directed ought to obey it or assign a reasonable cause why he cannot obey.

The same to the Archbishop of Ravenna.

If at any time we direct certain *writings* to your fraternity which appear to exasperate your mind, you ought not to be troubled *or moved, or to believe that we wish to render your person contemptible or despised, because we love you with most abundant charity as our dear brother and an immovable column of the Church, and we desire in every way the increase of your honor and exaltation. For although we often write harshly and severely to our brothers and fellow bishops according to the variety of the matters suggested to us, this nevertheless occurs not from diminished affection, but so that we may be proved to give satisfaction to the complaints of those protesting, according to God and according to the duty of our office. Therefore we admonish your prudence and earnestly exhort you that henceforth you be neither moved nor troubled, nor let your mind be cast down, if we write something severe or harsh to you; but, as a provident and discerning man,* diligently considering *and attending to* the character of the affair concerning which it is written to you, you are either *devoutly and* reverently to fulfill our mandate or, through your letters, to set forth a *sufficient and* reasonable cause why you cannot fulfill it, because *we* shall bear it patiently if you do not do what was suggested to us by a depraved representation.

Chapter VI

Latin source headnote: The Cistercians are privileged so that they cannot be sued through a papal rescript unless mention of their order is made in it.

The same to the Cistercian Brothers.

Since, having professed the Cistercian order, *you enjoy the privilege which the other brothers* [*of the same order*] *enjoy, when a dispute concerning tithes has arisen between you and other secular clerics, those clerics, concealing the fact that you are of the Cistercian order and obtaining letters from the Apostolic See against you as though against monks of another order, then trouble you with oaths and litigation, as we have learned from your report, and with burdensome expenses. Wishing therefore solicitously to provide for you, lest by the temerity of any persons you be vexed contrary to the tenor of your privileges, by apostolic authority we command you that,* if letters have been obtained from the Apostolic See against you concerning tithes or other things which the Apostolic See has specially granted to your order, without mention being made of the Cistercian order, you are by no means bound to answer by virtue of them.

Chapter VII

Latin source headnote (Abbas Siculus): If, while a see is vacant, a chapter is written to, as exercising the bishop's functions, that it confer a prebend upon someone, and a bishop is created before the mandate has been executed, then, if the collation of prebends pertains to him, he is bound to fulfill it. This it says according to the commonly approved reading.

The same to the Bishop of Tournai.

Her [or it], you ... (*And below:*) Some time ago, before your promotion, if we remember correctly, letters issued from us by which we gave a mandate and command to the dean and the church committed to you, while you were still a member of that chapter, that they should receive as a canon *our beloved son* P., *the bearer of the present writings*, who derived his origin from the Jewish people and by divine grace *humbly and devoutly* received the faith of Christ, *in consideration of his manner of life and in consideration of his learning, in which he has so advanced that he is not undeservedly considered worthy of an ecclesiastical benefice; and that, upon receiving our letters,* they ought generously to confer upon him a prebend, *if any were vacant, or the first one which should happen to become vacant*. (*And below:*) But they, *as we learned from the report of the same M., having received our letters after your consecration*, could not, *as they asserted*, put our command into *due* execution, because the grant of prebends pertained to you.

Since, therefore, the aforesaid P., *as he asserts*, earnestly required you concerning this on our behalf, *you* answered him that you had received no mandate *from us* concerning it, and thus you sent him away from you with the affair unfinished. You ought by no means to have done this if you had considered the date of the letters more diligently, since, at the time when those letters were given, you were a member of that chapter, as one who was archdeacon and canon of the same church, *although* you had not yet been consecrated bishop. (*And below:*) You ought not to disdain him because he was a Jew. (*And below:*) *We command your fraternity to receive him as a canon of your church and assign him a stall in the choir and a place in the chapter.*

Chapter VIII

Latin source headnote: A rescript obtained for benefices is not valid if the dignity of the person obtaining it is concealed in it.

Lucius III to the Bishop of Lincoln.

It has come to our ears *through your report* that deans, archdeacons, precentors, or others endowed with ecclesiastical dignities, when obtaining letters concerning lesser benefices *through intermediary persons*, very often suppress the name of their dignity and designate themselves by their simple name,

as though they held no ecclesiastical office; *and therefore you ask to be instructed by our rescript whether this fraud of concealment ought to produce prejudice against them.*

To your consultation *therefore* we respond in this manner: since it is not our intention that persons abounding in many revenues should, through our letters, trouble poor clerics concerning lesser benefices, we will that letters in which a claimant suppresses the name of his dignity obtain no *force whatsoever*. *Lastly, etc.* (*Compare chapter* 36, *On Appeals, II.*28.)

Chapter IX

Latin source headnote: A second rescript obtained by an adversary is valid, although it makes no mention of the first, if the first person obtaining a rescript did not use it through guile or negligence.

The same to the Bishop of Norwich.

But if anyone, drawn into judgment by authority of later letters obtained by his adversary, should object that he has earlier letters of which no mention is made in the later ones, he ought not to be excused if through guile or negligence he postponed using them. If, however, he did so because he was unable to obtain access to the delegated judge, he cannot be sued by virtue of the later letters.

Chapter X

Latin source headnote: Rescripts by which unspecified judges are appointed or future affairs are committed are not valid.

The same.

For this purpose we have been *established by the Lord's ordering in the seat of justice: that the things attempted contrary to justice may through our solicitude be recalled to the path of rectitude, etc.* (*And below:*) *Accordingly,* it has been reported to us that certain persons in parts of your province have, as they assert, received from our chancery letters by which all their affairs are committed to the decision of one judge or of several whom they may choose for themselves. Thus it happens that, if they wish to bring an action against someone, they do not seek the examination of the ordinary judge, but have recourse, for examination of the dispute, to one judge or several delegates favorable to themselves and *on that account* suspect to the opposing party.

No one who has obtained even a slight knowledge of canonical instruction doubts how contrary this is to God and inimical to the sacred canons. We do not believe that such letters issued from our chancery; or, if perhaps they did issue, they escaped our awareness, which, impeded by diverse occupations, does not suffice for examining each individual matter. We therefore, wishing to oppose this disease with a swift remedy, command *your fraternity by apostolic writings* that, if you find such letters *already obtained or to be obtained hereafter* in your province, you are by our authority to decree that they lack force, *and to prohibit their admission in judgment by anyone concerning any dispute whatsoever*.

Chapter XI

Latin source headnote: Faulty Latin invalidates a papal rescript. John Andrew says this; the Abbot agrees.

The same.

It has come to our hearing through your report that H. of Saint Stephen presented to you, concerning his absolution, letters which at first sight appeared apostolic. *Because you regarded them as suspect and did not think that they had issued from the chancery of the Roman Church, you took care to send them back to us, consulting our apostolate—whence we commend your devotion in the Lord—as to whether, by occasion of those letters, you ought to regard the aforesaid man as absolved.* Because they contain a manifest error of construction, we will that you place no faith in them.

Chapter XII

Latin source headnote: Against a second rescript there can be no objection on the ground that a first rescript obtained by the appellant was concealed, when no mention of his appeal was made in the first. John Andrew says this; Abbas Siculus agrees.

Clement III.

It became known to us on behalf of S., a dignitary of the church of Tarentum, that, although the chapel of Emptonn. belongs by right to the aforesaid church, *it has for a long time been unjustly withdrawn from it; and* O. the deacon, who detains the said chapel, after making an appeal removed *G.*, the chaplain of that church, who was ministering in it in the name of S. When S. had prosecuted the matter and obtained letters to judges, O. himself did not take care to prosecute his appeal. When by authority of the aforesaid judges he was summoned to court, he said that he had earlier letters of which no mention was made in the later ones. He suppressed them until the third citation and postponed using them through guile or negligence, as appeared from the length of time; in those letters no mention was made of the appeal taken by him, although two years had already elapsed from the time of the appeal.

Therefore, *by apostolic writings we command your fraternity* that, if it is established that matters stand thus, after restoring to their former state everything which you find to have been attempted after O.'s appeal, you take care, *appeal being removed*, to restore the aforesaid chapel to the mother church; and, if it is established that O. did not prosecute *his* appeal, condemn the aforesaid O. to pay S. the necessary expenses.

Chapter XIII

Latin source headnote: A rescript addressed to several persons with the clause "But if not all, etc." is understood with respect both to incapacity in fact and to incapacity in law.

Celestine III.

By a petition sent to us, you asked of what incapacity the provision is understood which is often customarily appended in our letters: that if two or three, *or even more*, to whom the letters are directed cannot be present together for their execution, one or more *of those* to whom it is written shall nevertheless execute them.

We hold *in this matter* that the incapacity is understood both in law and in fact. In law, if it is established that any of those *to whom the letters are directed* is a slave, infamous, or restrained by another lawful impediment; in fact, if it is established that he has died by the event of death, or is impeded by an instance of unavoidable necessity so that he cannot be present—provided that the person who by necessity cannot be present takes care, if he can, canonically to send his excuse to his

colleagues, so that the other co-judges or executors may nevertheless proceed to the completion of the mandate enjoined. Nor can a person who merely does not wish to be present be excused in any respect by this interpretation of impossibility, unless perhaps it is expressed in the rescript in this manner: "if not all shall have been present," or "if they shall have been unable or unwilling to be present together."

Chapter XIV

Latin source headnote: In a dispute concerning the revocation of rescripts, recourse is had to arbitrators if the judges do not defer to one another in adjudicating the matter and do not agree with one another. This it says as far as § "Since." — (§ "Since," etc.): Through a general clause placed in a rescript, before the persons or things are specified, the delegate has jurisdiction in capacity but not in exercise. And special letters derogate from general letters with respect to matters not specified in the latter, although they make no mention of them. The Abbot.

Innocent III to the Bishop of Ely.

The pastoral office ... (*And below:* [*compare chapter* 28, *On the Office of a Delegated Judge, I.*29.]) Moreover, you asked, when there is doubt concerning the revocation of letters, whether the earlier or the later judges ought to adjudicate the matter, and whether the first letters have been revoked by the second. To this we respond that, unless the later judges decide to defer to the earlier, or conversely, both sets are to adjudicate it together; and, if perhaps they are unable together to agree upon one decision, although there are more judges on one side than on the other, a dispute of this kind is to be quieted through arbitrators chosen jointly by the parties.

Since letters are often obtained from us under a form of this kind, namely, "We have considered that the cause which such a person proposes that he has against such a person and certain others concerning this and concerning certain other things should be committed to you," you also solicitously asked whether, from a delegation of this kind, the judge has power over the persons or things to be specified before the specification of those persons or things. You added the question whether, before the persons or things have been specified by name, special letters concerning matters not expressed in the earlier commission but generally comprehended in it, making no mention of the earlier commission, should issue from the Apostolic See to other judges and obtain the same force.

We therefore respond to these two matters in this manner: since without doubt a general provision is derogated from by a special one, the jurisdiction attributed by general letters is entirely weakened by special letters as regards the matters which are specially expressed, although they make no mention of the earlier letters. Hence the first question is left superfluous, even though it may rightly be said that, until the jurisdiction is revoked, the delegate possesses it over the articles concerning things or persons that are to be specified; but before the persons or things are specified, the delegate cannot exercise jurisdiction of this kind. [*But because, etc.* (*Compare chapter* 28, *On the Office of a Delegated Judge, I.*29.) *Given at Rome, at Saint Peter's, on the fourteenth day before the Kalends of June,* 1204.]

Chapter XV

Latin source headnote: Through the general clause "certain other persons and other things," neither an unrestrained multitude, nor persons or things greater than those expressed, are included, but only equal or lesser ones.

The same to the Archbishop of Sens.

The Apostolic See is accustomed to show itself liberal to petitioners; but certain persons wickedly abuse its grace, *when they twist to malice what it grants out of benignity. For certain persons, wishing to act maliciously, express lesser and more insignificant persons by their proper names in our commissions, but do not designate greater and more dignified persons by specific terms; rather, they comprehend them under a certain covering of generality so that they may more easily obtain the commissions themselves from us, under this form: "Such persons complain of this or that person, and of certain others to be expressed by their proper names, who are exceedingly injurious and burdensome to them concerning such an affair and certain other matters."*

We therefore, wishing to oppose their malicious acts, decree that, when only lesser and more insignificant persons are designated in our commissions, greater and more dignified persons are not understood to be included under the general clause. Nor is it permitted, on occasion of generality of this kind, to summon an unrestrained multitude into judgment; nor are those who make mention only of lesser and lighter matters to be heard concerning greater and weightier affairs. But if anyone expresses certain persons not because he wishes to litigate with them in court, but so that he may be able to pass to their equals or inferiors, because fraud and guile ought not to aid him, let him, as a mendacious petitioner, be entirely deprived of the things obtained. [*Given at Anagni, on the fifteenth day before the Kalends of January, in the sixth year,* 1203.]

Chapter XVI

Latin source headnote: One who obtains and uses different rescripts against one person concerning the same matter before different judges loses the benefit of both.

The same to R. the Cantor and R. the Prior of Mont-des-Lépreux.

From the tenor of the letters which you sent us *through our beloved son Ph., the bearer of the present writings*, we understood *clearly* that R., the priest of Colleville, had obtained apostolic letters to other judges concerning the dispute pending between himself *and our beloved son*, the abbot *and convent* of Bec, *concerning the manor of Colleville and other property*. When those judges cited the opposing party, the said priest refused to litigate before them. *Later, however, that same priest presented to you our letters concerning the same affair, in which no mention of the earlier letters was made.* And when you wished to proceed to cognizance of the cause, *the parties having been summoned to your presence, the aforesaid* abbot proposed before you that he was not bound to answer the priest by virtue of the letters directed to you, since by other letters he had been cited by other judges, and those letters had not been revoked by authority of the letters directed to you. *But because you were in doubt concerning this, you considered that the Apostolic See should be consulted.*

We therefore, attending to the fraud of the aforesaid priest, who obtained two commissions concerning the same affair, of which one made no mention of the other, decree—because fraud and guile ought not to aid anyone—that he is to be deprived of the benefit of both. [*Given at Ferentino, on the fourth day before the Ides of July, in the sixth year,* 1203.]

Chapter XVII

Latin source headnote: A rescript obtained for a benefice is not valid if it makes no mention of the benefice of the person obtaining it.

The same to the Archbishop of Milan.

Since we regulate the writings of the Apostolic See in such a way *that we knowingly cause nothing to be appended in them which ought to be reproved at law, we wonder and are moved not a little that, whenever we direct our letters to you or to any persons subject to you, you write back that you wonder at them, as if we were commanding something dishonorable.* For you wrote to us that, although the cleric P. had obtained a sufficient prebend for himself in the Modecensian church, you wondered that we had sent *apostolic* letters to the provost and brothers of the church of Gronzola concerning his reception in that church; although, if you had *diligently* attended to the sequence of our letters, you would have found *nothing at all* in them which ought to have offended your mind.

For in those *same* letters neither was mention made of P.'s prebend, nor was he called a canon of Modecia—indeed, he was not *even* called a cleric in them—and this condition was appended in the letters themselves: "if he should be worthy to obtain an ecclesiastical benefice, *and if the same church had acquired from the gift of his parents a certain chapel with its endowment, and for a time received offerings and mortuary dues from his kinsmen, and tithes annually*." You could have understood how those letters had been obtained, *in which no mention was made of the benefice of the person on whose behalf it was written. Therefore, by apostolic writings we command your fraternity that, whenever apostolic letters are directed to you or to persons subject to you, you diligently attend to their tenor and cause what is commanded in them to be put into effect, provided that they were obtained neither by suppression of the truth nor by expression of a falsehood.* [*Given at Rome, etc., on the thirteenth day before the Kalends of June,* 1198.]

Chapter XVIII

Latin source headnote: The order of a rescript receives its interpretation from the common law.

The same to the Bishop-elect, the Dean, and N., Canon of Cambrai.

We remember that we committed to your discretion the cause pending between the Praemonstratensian and Pramonensian churches concerning the possessions of Anapia, *to be terminated by a canonical conclusion. But* because we observed that it was inserted in *those* letters that, if either party, having been lawfully cited, disdained to come into your presence or to obey your judgment, you were *nevertheless* not to delay in receiving the proofs of the party present and, so far as you could by law, in proceeding to cognizance and decision of the cause, we wish the clause "so far as you can by law"—which ought to have been inserted before mention was made of the reception of proofs—to precede that clause concerning the reception of proofs.

We therefore command *your discretion by apostolic writings*, understanding it to be placed there, not to delay in proceeding in the *same* cause according to the tenor of *those* letters, taking *earnest* care that, if lawful proceedings have been conducted in the same affair by authority of the earlier letters, they remain firm and stable. Otherwise, if it is established that, on occasion of the aforesaid clause, anything was attempted to the prejudice of the other party, we decree that it shall lack force; *wishing nevertheless* and commanding that, in deciding the affair itself, as was set forth above, you proceed canonically, appeal being removed, concerning both the principal and the incidental questions. [*No contrary provisions, etc. Given at the Lateran, on the thirteenth day before the Kalends of April,* 1198.]

Chapter XIX

Latin source headnote: An impetration concerning a church with a fixed number is not valid when no mention of the number is made, if by it the number of canons is broken, although the number of prebends is not broken; and proceedings conducted from it are null. This states the meaning according to Panormitanus.

The same to the Archbishop of Sens.

Appearing at the Apostolic See, the cleric P. formerly proposed *before our beloved son G., cardinal-deacon of Sant'Angelo, whom we had granted as auditor to him and to the other party,* that Pope C., our predecessor *of good memory*, had commanded *our beloved son*, the dean, and the chapter of Bourges to receive him as a canon and brother and to confer a prebend upon him, if one were then vacant in their church or the next one to become vacant, *our venerable brother the Archbishop of Bourges having been granted to him as admonisher*. When they did not take care to admit his mandate, our predecessor commanded them by way of precept to fulfill what he had commanded them, executors having been appointed for him in this matter.

[*Meanwhile, when a messenger of the chapter came to the Apostolic See and suggested that P. himself had prebends in several churches, he obtained the absolution of the church of Bourges from his claim, and also obtained an indulgence that they should not be compelled to receive anyone as a brother within three years. When afterward the same P. returned to the Roman Church and took care to explain to our same predecessor that, although he had obtained in the church of Clermont a certain benefice which is customarily granted even to laymen and is called a* familiaritas, *nevertheless he could not be fittingly sustained from it or from another which he held, that predecessor enjoined the said dean and chapter, while the aforesaid indulgence remained in its force, to confer upon him the first prebend that should become vacant after the three-year period, and meanwhile to assign him a stall in the choir and a place in the chapter. Execution of this mandate was delegated to our beloved son the provost of Clermont. As was manifestly evident from his letters, after he had diligently admonished the said dean and chapter to fulfill the apostolic mandate and had made no progress at all, by apostolic authority he took care to invest the aforesaid P. with the first prebend to become vacant after the three-year period, granting him a stall in the choir and a place in the chapter.*]

But the opposing party answered that, since a fixed number of canons had been instituted in the church of Bourges, confirmed by oath and confirmed by the Roman Pontiff, and since the aforesaid P. had made no mention of this in his letters, it was to be understood that he had circumvented our predecessor and obtained the said letters with the truth suppressed. *For although, when a fixed number is established in a church, this condition is appended or is understood to be appended—"the authority of the Apostolic See being preserved"—nevertheless it was not to be believed that he had knowingly commanded that P. be received contrary to their oaths, since nothing concerning this had been expressed in his letters. We therefore, having been instructed concerning the foregoing by the aforesaid cardinal,* command *your discretion by apostolic writings, by way of precept,* that, if it is lawfully established before you that the canonical number which now exists in the same church was confirmed by oath by the dean and chapter of that church before the aforesaid cleric obtained executory letters *from our predecessor*, you decree that whatever was done on occasion of those letters, *which the same cleric is known to have obtained from the Apostolic See, is to be regarded as void and* invalid. Otherwise, after removing the obstacle of any appeal, cause a prebend in that church to be assigned to him, if one is vacant. [*Those contradicting, etc. Given at Spoleto, on the eleventh day before the Kalends of September,* 1198.]

Chapter XX

Latin source headnote: A difficult and famous chapter, and the key to this entire title. In sum it says this: one who states a falsehood or conceals a truth in a rescript, if he does so maliciously, is wholly deprived of what he obtained. But if through simplicity or ignorance he would, with the truth expressed and the falsehood suppressed, have obtained at least letters in the common form, the delegate proceeds with the order of law observed and not according to the special form of the rescript; it is otherwise if he would in no manner have obtained letters.

The same to A., Canon of Poitiers.

Concerning letters obtained from us by some persons through malice and by others through ignorance, with the truth concealed or a falsehood suggested, we have understood different persons to hold different opinions. Some assert that they ought to be entirely deprived of every benefit of the letters, since a mendacious petitioner ought to be wholly deprived of the things obtained; others say that, although the special form expressed in our letters ought not to benefit them, *nevertheless* the delegated judge is to proceed in the affair according to the rigor of law.

We therefore believe that this distinction is to be employed between those who obtain letters from us through fraud or malice and those who obtain them through simplicity or ignorance: those who in the former manner state a falsehood or suppress the truth are, as a penalty for their perversity, to obtain no benefit from those letters, so that, after proof concerning this has been made before the delegate, he is in no way to adjudicate the cause.

Among the others, however, who obtain letters in the latter manner, we have considered that a distinction is to be made according to what falsehood was suggested or what truth was suppressed. For if the falsehood stated or the truth concealed is of such a kind that, although that falsehood had been concealed or that truth expressed, we would nevertheless have given letters at least in the common form, the delegate, not following the form appended in the letters themselves, is to proceed in the cause according to the order of law. But if, through the expression of such a falsehood or even the suppression of the truth, letters were obtained which, had that falsehood been concealed or that truth expressed, we would not have given at all, the delegate is not to proceed in any respect—except perhaps only so far as, after summoning the parties to his presence, he may adjudicate the character of the petitions—so that in both cases the same reason which would move the delegating authority may also move the delegate, and where the delegating authority would refuse its letters, the delegate likewise is in no way to interpose the office of his cognizance. [*Given at Ferentino, on the fifteenth day before the Kalends of November, in the eleventh year of our pontificate,* 1208.]

Chapter XXI

Latin source headnote: In a cause belonging to a monastery, an abbot is sued through a rescript in which no mention of the convent is made; nor can an appeal be taken for this reason, unless the goods of the abbot and of the convent are wholly distinct.

The same to the Abbot and Convent of Prémontré.

By *your letters* you asked to be instructed by us whether, by virtue of letters obtained against abbots *of your order* without any mention being made of their convents, the abbots themselves are bound, in causes which pertain to the convents and to those same abbots, to answer persons complaining

against them concerning those causes; and whether, although appeal has been prohibited, they can protect themselves by raising an appeal so that they need not answer.

Concerning this we have considered that this answer should be given *to you*: *those same abbots*, unless another reasonable cause supports them, cannot protect themselves through an appeal so as not to be bound to answer lawfully by authority of letters of this kind, since by virtue of their office *abbots* are bound to manage the affairs of their congregations—unless perhaps the affairs of the abbot and of the convent are wholly distinct. [*Given at the Lateran, on the fourth day before the Kalends of March, in the eleventh year,* 1208.]

Chapter XXII

Latin source headnote: Proceedings conducted under surreptitiously obtained letters are invalidated; but proceedings conducted contrary to the form of a rescript are declared invalid.

The same to the Archbishop and Master W., Canon of Magdeburg.

When our beloved daughter in Christ R., custodian of the church of Hesia, and the cleric Volpert, proctor of the nun G., had formerly approached the Apostolic See [now] [and] had litigated for some time before us concerning the elections celebrated in that church of the said custodian and nun,

[after diligently hearing the matters proposed both by the proctor himself and by the custodian, we commanded the abbots of Helerward and Herg and the provost of Geismar that, supported by our authority and notwithstanding any contradiction or appeal, they declare void and invalid whatever had been done concerning the election of the said nun; and, after inquiring more diligently into the truth concerning the election of the custodian, if they found her election canonical and her person suitable, they were to confirm her by apostolic authority, restraining those who contradicted through ecclesiastical censure, appeal being set aside.

But when the custodian presented this mandate to the judges, they declared void and invalid what had been done concerning the aforesaid nun. When she refused to relinquish the abbey, the judges bound her with the bond of excommunication and ordered her to be more strictly avoided; but after several days she appealed through a messenger concerning her election, together with those who had elected her. The judges showed no deference to the appeal, especially since her election had been invalidated by our express mandate and appeal was prohibited in our letters. After citing the convent of Herisia, they took care to inquire into the custodian's election as had been enjoined upon them. When they found her election canonical and her person suitable, after taking the counsel of prudent men they confirmed her election and by a definitive sentence adjudged the abbey of Herisia to her by our authority.

Although the diocesan bishop appealed and prohibited the convent of Herisia from presuming to obey her as abbess, the judges nevertheless introduced her with all gentleness into corporal possession of the abbey. She was violently ejected from it by the brother of the aforesaid nun and her supporters; and, in addition to other evils wickedly perpetrated there by them, they compelled R. to confirm by oath that until the next approaching feast of Saint Martin she would not enter the church of Herisia or make use even of the simple house or stipend which she held there.

When R. was gravely vexed concerning these and other matters, she considered that recourse should be had to our presence, the aforesaid nun G. likewise coming. R. proposed a complaint concerning

them and requested confirmation of the proceedings of the aforesaid judges and satisfaction for the damages and injuries inflicted upon her. G. proposed to the contrary that, since she had been elected abbess of the church of Herisia by the greater and sounder part of the convent and her election had been confirmed by the diocesan bishop, the custodian obtained letters to the abbot of Conradesburch and his co-judges. When G., having been cited, came into their presence and showed that she had been despoiled on occasion of the custodian, she considered that by sentence of those judges she was in no way bound to answer the custodian unless she were first restored. But the custodian, appealing from that sentence, personally prosecuted her appeal.

Furthermore, although G. sent a proctor solely so that the same sentence might be confirmed, her proctor, exceeding the bounds of his mandate, permitted the custodian to obtain what she wished against G. and brought letters back to the aforesaid judges. One of those judges lay under a sentence of excommunication, as the letters produced before us by our venerable brother the Archbishop of Mainz contained. The other, with the third absent, proceeded irregularly in every matter; and, although both G. and the chapter of Herisia appealed on account of various grievances, they nevertheless proceeded and caused the custodian to be introduced into corporal possession through Albert, her familiar—who, as was proved by the same letters of the aforesaid archbishop, was bound by the bond of excommunication—and B. the parish priest.

To prove that the said proctor had received a mandate to prosecute the appeal interposed, G. produced witnesses before the auditor granted to her. It was answered to the contrary that, even if those witnesses had proved such a mandate, this by no means showed that he had not received another; and therefore, since the presumption was in favor of the sentence, especially because it had been promulgated by us with mature counsel, it could plainly be understood that the aforesaid proctor had received a general mandate concerning the principal affair, as the same custodian demonstrated more fully through the single witness whom she produced.

Having understood these and other matters proposed by each party, we considered that the aforesaid nun G. should be removed by sentence from administration of the abbey. By our letters we commanded our beloved sons, the scholastic of Hildesheim and the custodian and scholastic of Minden, to approach that church in person and take care to commit administration of the abbey to another suitable person, to whom restitution from both sides of the things taken away should be made for the use of the church. Meanwhile, adjudicating the sentence of confirmation rendered by the delegated judges concerning the custodian's election, they were, as justice required, to confirm or invalidate it. That is, if it were established that the sentence should be invalidated because one of the delegated judges who rendered it was publicly bound by the bond of excommunication when it was rendered, as was shown by the metropolitan's letters, or for another cause, they were to quash it and adjudicate the custodian's election anew. Hearing more fully both the matters proposed concerning the facts and concerning the person, they were to invalidate her election if it were found canonical; otherwise, after wholly invalidating it, they were to give the sisters free power to elect and, appeal being removed, confirm the election of the woman whom they should consider regularly to be elected as abbess. They were also to cause provision to be made for the aforesaid custodian's lawful expenses from the goods of the church, and to compel those contradicting or rebelling, through ecclesiastical censure with appeal removed, to desist from their temerity. If named witnesses withdrew through

favor, hatred, or fear, they were likewise to compel them, by the same constraint and with appeal ceasing, to bear testimony to the truth.

Those judges summoned both the custodian and the convent of the church of Herisia to their presence and granted them a period of delay. But while the delay was pending, the provostess of Herisia and her accomplices presented our letters to the abbot of Reinvehusen, the provost of the New Church, and the parish priest of Eschenshuseim. In those letters the same judges were commanded, justice being observed, to compel the aforesaid custodian by ecclesiastical censure, with appeal removed, to restore certain ornaments of that church, the proceeds of the custodianship pertaining to the use of the church, the revenues from Meinchsern which ought to minister to the sisters' necessities, and certain other things from their prebends which she had maliciously taken through certain robbers and detained at the decision of her own will.

After the custodian was cited by authority of these letters, because she could not appear before the judges on the day appointed for her, after an appeal had been interposed on her behalf by the cleric Lambert they pronounced a sentence of excommunication against her. Although her proctor appeared before them that same day and requested relaxation of that sentence as having been rendered less than reasonably, he was heard in nothing at all; he therefore ratified the appeal interposed by Lambert and withdrew. Showing no deference to the appeal, the judges received the witnesses produced on behalf of the provostess and her accomplices. After publishing their depositions in the custodian's absence, they condemned her and her accomplices to restitution of one hundred and fifty marks and likewise for theft and sacrilege, subjecting them to a sentence of excommunication.

Afterward, when the custodian's proctor presented himself at the appointed time before the aforesaid scholastic of Minden and his co-judges to proceed in judgment on her behalf, those judges asserted that, since the custodian had been excommunicated by the aforesaid judges, just as she could not bring an action, so neither ought her proctor to be heard; by sentence they repelled her from acting. The proctor answered to the contrary that such a sentence of excommunication could harm neither him nor the custodian, since it had been impeded at law by the obstacle of a lawful appeal which preceded it. When the judges, regarding this allegation as frivolous, refused to adjudicate the appeal, the proctor appealed to the Apostolic See. Refusing to defer to that appeal, they received the witnesses whom the other party wished to produce to prove that one of the delegated judges who had rendered the sentence for the custodian had been excommunicated when the sentence of confirmation for her was rendered, taking as their occasion that some of the witnesses had come from remote regions.

For this reason certain sisters of Herisia appealed to the Apostolic See for themselves and the custodian. Disregarding the appeal interposed, the judges removed the nun G. from administration of the church of Herisia and committed it to the provostess of that church, who was to receive certain suitable persons as her assistants. The same judges also omitted the article concerning restitution of the things taken away, which had first been inserted in the mandate of our letters, and received witnesses concerning another article: namely, that a lawful appeal had formerly been taken from the aforesaid abbot and his co-judges because they refused to provide the parties with a copy of our rescript.

Afterward, publishing the witnesses received concerning the aforesaid articles, they wholly invalidated the sentence of confirmation rendered for the often-mentioned custodian. Inquiring

nevertheless into her election, they quashed it as having been celebrated less than canonically and granted the sisters free power to elect. Assembling together, the sisters unanimously elected the often-mentioned nun G. The said judges confirmed her election and solemnly assigned her possession of the abbey and its chair, publicly declaring the aforesaid custodian and her supporters excommunicated.

Subsequently, those who had been appointed by the aforesaid judges as auditors concerning the foregoing article, namely the restitution of the things taken away, received the witnesses produced by the aforesaid provostess and her accomplices and transmitted their depositions, enclosed under their own seals, to the same judges. But when the custodian began her journey to come to the Apostolic See, the aforesaid judges refused to publish the statements of the witnesses and sent them enclosed under their seals to our presence.]

We therefore diligently considered these and other matters which both the aforesaid custodian and the cleric I., who had come against her concerning the same affair, wished to propose when recently appearing at the Apostolic See, as well as the records of the judges produced before us by those same persons. We plainly discovered that the aforesaid letters obtained for the abbot of Remech and his co-judges had been obtained by subreption. For cognizance of the article concerning restitution of the things taken away had been committed in them without our knowledge, although that article had been inserted in the earlier letters obtained for the scholastic of Hildesheim and his co-judges, of which no mention was made in the second letters. We therefore considered that what is known to have been attempted on occasion of those letters should be wholly invalidated.

We also found that the said scholastic of Hildesheim and his co-judges had proceeded less than providently. For our letters principally commanded them to approach the aforesaid church in person and commit administration of the abbey to a suitable person, to whom restitution from both sides of the things taken away should be made for its use. But they, transposing the form of the apostolic mandate, omitted that article and adjudicated other articles at great length and out of order. We therefore decree void and invalid their proceedings attempted contrary to the form of our rescript and the order of law.

Accordingly, we command you, after assembling in a suitable and safe place and restoring G., A., and certain other sisters of the same church as justice requires, to observe the form of our mandate with exact diligence and, appeal being removed, to proceed in the affair itself with reason going before, according to the tenor of the preceding letters, so that through your circumspect solicitude a due conclusion may at least on this occasion be imposed upon an affair so long protracted. [But because, etc.]

Chapter XXIII

Latin source headnote: A second rescript is valid although it makes no mention of the first, when the person who obtained the first was unwilling to use it within a year.

The same.

It very often happens that certain persons, after obtaining our letters against others concerning certain matters and postponing their use for a long time, finally produce them when, by authority of other letters, they begin to be sued by those against whom they had first obtained letters, saying that

the later letters are not valid because they make no mention of the earlier ones. Since human malice is not to be indulged, by authority of the present writings we establish that, if anyone obtaining our letters postpones using them through malice or negligence for a year after he has had access to the judges, he may be sued by authority of the later letters, although no mention of the earlier ones is made in them.

Chapter XXIV

Latin source headnote (Abbas Siculus): If something is commanded to an ordinary by a delegate, he ought humbly to execute it. But if another delegate, through other letters, commands the contrary after execution, or if before execution it becomes known to the ordinary that there is a dispute over jurisdiction between the delegate who issued the command and another, he is to cause copies of both sets of letters to be produced to him—not so that he may adjudicate the matter jurisdictionally, but so that he may inform himself whether the first letters are revoked by the second. If the first are revoked, he is to execute the second command. But if they are not revoked, or if he is in doubt about this, he is not to execute the second command until the dispute over jurisdiction is terminated.

The same to the Archbishop of Rouen.

When it happens ... (*And below:* [compare chapter 11, *On Age and Quality, I.*14.]) Moreover, when certain persons litigating over a matter obtain letters to different judges, some of whom, obtained by one party, command you to declare that the opposing party lies under a sentence of excommunication, while other judges afterward enjoin you to declare that same party absolved, you ask us whether in this matter you ought to obey both sets, neither, or at least one of them.

Responding concerning this to your prudence, we believe that a distinction is to be made: when you are known to have received the first command, had it perhaps become known to you that a dispute over jurisdiction had arisen between those judges and the others, or did you know nothing at all about this? If nothing at all concerning a dispute of this kind has become known to you when you happen to receive the first command, you ought humbly to put it into execution. But if the contrary is later commanded to you by others, then, after a copy of the letters obtained from the Apostolic See for both sets of judges has been requested—which by authority of the present writings we strictly command to be produced to you—if from their tenor you clearly discover, so that there is no room at all for doubt, that the letters obtained for those from whom you received the second command expressly revoke the letters of the others, you are fearlessly to execute what is commanded to you in the second place.

But if from inspection of the letters it is manifestly established before you that the letters obtained for those who gave the first command are by no means revoked by the others, you are in no way to execute the second command. If you rightly have doubt concerning this, you ought not to proceed to execute the second command until, according to the tenor of one of our constitutions, this dispute between them is quieted. You ought to do the same if, after the first command has been received but before it has been put into execution, it should become known to you that they have begun to dispute among themselves concerning the jurisdiction committed to them.

In all these matters, however, it is fitting that you have a pure and provident intention, lest, in order to decline a command, you say that you are in doubt where no doubt exists, or, in order to execute [a command], assert that you are certain where you ought not to be certain. Although from these things

definite instruction is given to you concerning how you ought to conduct yourself in these matters, no power is attributed to you to adjudicate the jurisdictional dispute between the delegates or the parties. [*Moreover, etc.* (compare chapter 36, *On the Office of a Delegated Judge, I.*29.) *Given at the Lateran, on the Kalends of September, in the thirteenth year,* 1210.]

Chapter XXV

Latin source headnote: When several matters producing different effects are narrated in a rescript, it is not sufficient for the person obtaining it to prove only one of them in order to obtain both effects.

The same to Master G. and P. of Firmisca.

Formerly it was intimated to our ears from the letters of our beloved sons, the abbots of Saint-Nicaise of Reims, Sargiensis, and Vallis Regia, that letters had issued from us to them once and again concerning the fact that P., a cleric of Saint-Remi of Reims, detained the parish of Salice Saint-Remi, which the cleric R. de Clivo proposed had been conferred upon him by the abbot of Saint-Remi through an intermediary person. They cited the parties a first, second, and third time; and because the said P. of Saint-Remi, although cited repeatedly, refused to appear before them in person or through any representative, they bound him with the bond of excommunication and caused the fruits of the parish to be sequestered.

When that same P. afterward approached them, promised that he would submit to the law, and obtained absolution, they granted him letters of absolution and assigned him a day and place on which he should fulfill before them what he had promised. Erasing the day and place from those letters, he wrote in the place of the erasure that they commanded the sequestered fruits to be assigned to him. He ultimately confessed this before two of them, the third having excused his absence by letters.

Since an excess of such temerity was not free from the taint of falsehood, we commanded you that, if matters stood thus, you should impose perpetual silence upon that presumptuous man concerning the said parish and assign it, with the sequestered fruits, to the aforesaid cleric R. de Clivo. But, as you, sons G. and P., intimated to us by your letters, when the said R. had proved the aforesaid erasure before you through suitable witnesses and on this account requested that the said church be assigned to him, you were in doubt whether the clause "if matters stood thus" ought to be understood of all the foregoing matters or only of the article concerning the erasure. You therefore postponed proceeding further in the affair, choosing rather to implore an oracle of the Apostolic See concerning this than rashly to determine anything.

We therefore, commending your diligence in the Lord, respond that the clause ought to be referred to all the foregoing matters in order that the aforesaid church be conferred upon R. For although the vice of falsehood is sufficient to impose perpetual silence concerning that church upon the person who perpetrated falsehood of this kind, the same church is not on that account to be assigned to the adversary unless full proof has been made concerning the other matters. [Given at the Lateran, on the sixth day before the Nones of March, in the fifteenth year of our pontificate, 1212.]

Chapter XXVI

Latin source headnote: A rescript obtained for restoration to a benefice is not valid when it makes no mention of the cause of the excommunication and removal of the person obtaining it.

The same to the Bishop of Imola.

Our beloved son, the abbot of Saint Stephen of Bologna, intimated to us by his letters that, when he —to whom we committed the office of visitation in the city and diocese of Bologna—had considered that the priests B. and A. should be removed from their churches because of their grave and manifest excesses, those priests obtained from us letters in the common form directed to you concerning their restoration, making no mention at all of the cause of their removal or of the excommunication by which they remain bound.

When the proctors of the neighboring inhabitants and of the churches themselves proposed the aforesaid exceptions in your presence, you decreed that proceedings in the affair should be suspended until you received our good pleasure concerning our will. We therefore, commending your prudence in this, command your fraternity by apostolic writings that, if matters stand thus, you decree that the letters themselves, as obtained through suppression of the truth, lack force; and, appeal being removed, command that what was providently done concerning the aforesaid priests by the aforementioned abbot be firmly observed.

Chapter XXVII

Latin source headnote: By letters of justice a bishop is not bound to provide for one who has a perpetual vicarage or sufficient patrimony; nor are letters of grace for obtaining a benefice valid when the person obtaining them concealed a perpetual vicarage. This states both meanings comprehensively.

The same to the Bishop of Veratisama.

You asked to be instructed by the Apostolic See whether you are bound, under the common form "Since according to the Apostle," to provide an ecclesiastical benefice for the perpetual vicar of a church who has from the proceeds of his vicarage and his paternal goods that from which he can be fittingly sustained. We have considered that this answer should be given: since, through the aforesaid form, the Apostolic See has considered that relief should be given to the needs of poor clerics who have obtained no ecclesiastical benefice, as it is customary to express there, a perpetual vicar, unless he has made mention of the vicarage, ought to obtain no benefit from letters of this kind, as being obtained with the truth suppressed. For one for whom competent provision has been made from the proceeds of a perpetual vicarage ought not to be said to lack an ecclesiastical benefice. And for one who has the support of a sufficient benefice we do not readily write knowingly concerning the obtaining of another benefice without making mention of the first in our letters. [You, finally, etc. Given at the Lateran, on the sixth day before the Ides of January, in the sixteenth year of our pontificate, 1214.]

Chapter XXVIII

Latin source headnote: Through apostolic letters making no mention of this constitution, no one can be drawn beyond two days' journeys outside his diocese unless the letters were obtained with the

consent of the parties. This it says as far as § "There are also others." — §1. Letters obtained for lawsuits without the lord's special mandate are not valid unless they are obtained by a connected person. This it says.

The same, in the General Council.

Certain persons, abusing the favor of the Apostolic See, strive to obtain its letters to remote judges so that the defendant, wearied by labor and expenses, may be compelled to yield in the suit or to buy himself free from the claimant's importunity. Since access to injuries which observance of the law forbids ought not to lie open through judicial proceedings, we establish that no one may through apostolic letters be drawn to judgment more than two days' journeys beyond his diocese unless the letters were obtained with the assent of the parties or expressly made mention of this constitution.

§1. There are also others who, turning themselves to a new kind of commerce, fabricate causes concerning which they obtain letters from the Apostolic See without their lords' mandate, as though they could revive dormant complaints or introduce new disputes. They offer those letters for sale either to the defendant, so that he may not be troubled because of them by the loss of labor and expenses, or to the claimant, so that through them he may weary his adversary with undue harassment. Since lawsuits ought to be restricted rather than enlarged, by this general constitution we decree that, if anyone hereafter presumes to obtain apostolic letters concerning any dispute without his lord's special mandate, both those letters shall be invalid and he himself shall be punished as a falsifier—unless perhaps he is among those persons from whom a mandate ought not by law to be required.

Chapter XXIX

Latin source headnote: If, on occasion of two rescripts—one in the principal cause and the other in the cause of appeal—a dispute arises, not the judge appointed over the principal cause but the one appointed over the appeal ought to adjudicate the validity of the appeal.

Honorius III to the Archbishop of Canterbury and his Co-judges.

Our beloved son I. Sarracenus, a cleric, explained before us that, when Jordan, a cleric of Dummel, drew him into a cause before you by authority of our letters concerning the church of Saint Nicholas of Dummel, it was proposed by way of exception on behalf of I. in your presence that he ought not and could not be sued by authority of those letters, because you were distant by more than two days' journeys from the diocese in which the aforesaid church was situated, contrary to the statutes of the General Council, of which no mention was made in those letters.

Because, refusing to admit this exception, you nevertheless proceeded in the cause solely on the ground that I. held benefices in the dioceses of Rochester and Ely, as though from this he were understood to have a domicile there, he appealed to our hearing. But you, disregarding his appeal, decreed that the other party was to be put into possession of that church for the purpose of custody. When I. prosecuted the appeal interposed and obtained our letters concerning the foregoing to our venerable brother the Archbishop of York and his colleagues, you nevertheless continued to proceed in the cause and prohibited those judges from proceeding in the affair committed to them. Therefore we command your discretion, if matters stand thus, to suspend proceedings in that cause, since not you but the said judges ought to adjudicate to whom jurisdiction should pertain.

Chapter XXX

Latin source headnote: If several persons obtain rescripts concerning the same church, the date is controlling, so that the first person obtaining one is preferred and alone admitted. The doctors commonly summarize it thus, and this summary proceeds according to the common opinion which prevails today because of the new laws.

The same to the Bishop and Archdeacon of León.

The chapter of Holy Cross of Cambrai showed us by a petition produced before us that, after the cleric Callimachus of the diocese of Noyon first obtained our admonitory and then our preceptory letters directed to them concerning his obtaining a prebendal benefice in their church, the cleric B. of the diocese of Tournai obtained from us executory letters against them concerning the conferral of a similar benefice upon him in the same church, directed to I., Archbishop of Tournai, and his colleagues, without mention being made of the aforesaid letters. After an appeal to us had been interposed, those judges pronounced sentences of suspension and excommunication against them. The said C. also obtained our writings to other judges concerning execution of the mandate made on his behalf, and those judges pronounced sentences of suspension and excommunication against the same persons.

They therefore humbly petitioned us that, since there are only twelve prebends in the same church and for that reason they could not provide for both at once without great burden, we should cause those sentences to be relaxed and one of the two to be provided with a prebend in the same church—especially since this clause was inserted in the letters of each: "unless the same church has been burdened by our mandate concerning the reception of another." Therefore we command your discretion, after receiving as canon and brother, and assigning a prebendal benefice to, the one who first brought back the apostolic mandate to them, to relax the aforesaid sentences according to the form of the Church, after removing the obstacle of appeal, and to impose silence upon the other concerning a prebendal benefice in the same church.

Chapter XXXI

Latin source headnote: If one who has papal letters for a benefice renounces them in return for an annual pension, beneficial letters afterward obtained by him with this concealed are not valid.

The same to the Archbishop of Bourges, Legate of the Apostolic See.

It has come to our hearing through your report that certain clerics, after obtaining letters from the Apostolic See concerning their provision in certain churches subject to you by diocesan law, receive annual pensions or other benefices from those churches, withdraw from their claims against them, and renounce the benefit of our letters. They then approach the Apostolic See and obtain other letters from it concerning their provision, without mention being made of the letters previously obtained, and thus, abusing the grace of apostolic benignity, trouble the churches in manifold ways.

Therefore, lest such men glory in the cunning of their circumvention, we command your fraternity to decree that those who, after selling our letters in this manner, shall hereafter obtain—or have hitherto obtained—others without mention being made of the former letters are deprived of the benefit of the latter; and not to permit the churches against which they were obtained to be vexed on their occasion, revoking as void anything which you find to have been done under their pretext.

Chapter XXXII

Latin source headnote: A person received through apostolic letters, although he is awaiting a prebend, ought not to be received in another church through other letters which suppress that fact. This it says by adhering to the words of the letter.

Gregory IX to the Archbishop of Milan.

You proposed in our presence that certain clerics fraudulently obtain several letters from the Apostolic See, although the later letters make no mention of the earlier, so that they may be admitted in several churches. Thus, having sometimes been received in some churches, although they have not yet obtained an ecclesiastical benefice in them, they nevertheless assail and trouble other churches concerning their reception. (*And below:*) We command you to cause those clerics to remain content with the churches in which they have been received, and not to permit other churches to be troubled by them on occasion of letters of this kind, unless perhaps they made express mention of their reception.

Chapter XXXIII

Latin source headnote: A rescript which a revoked proctor, certified of the revocation, obtained outside judicial proceedings is not valid; it is otherwise, however, if he obtained it in judicial proceedings, provided the revocation had not come to the knowledge of the adversary or the judge. This it says according to the more common reading.

The same to the Bishop of Senlis and the Abbot of Chaalis.

It was proposed on behalf of the dean and chapter of Laon that, after they had pronounced a sentence of excommunication against the nobleman I. by authority of an apostolic indulgence, the proctors of the parties approached the Apostolic See on this account and, issue having been joined concerning various articles, we committed the cause to you for termination, adding that letters obtained without the assent of the parties should not obstruct it.

But the said nobleman, having been cited, proposed that proceedings ought not to be taken under those letters because V., who had obtained them, was a false proctor, since before the letters were obtained the nobleman had revoked the mandate delivered to him on account of the suspicion which he had conceived against him. When they proposed to the contrary that a revocation of this kind had not come to us or to themselves, you pronounced by an interlocutory decree that you ought to proceed under those letters. (*And below:*) When their proctor then requested that you inspect the aforesaid indulgence, the nobleman's proctor answered to the contrary that proceedings ought not to be taken under the said letters, producing certain other letters obtained later, which contained, among other things, that, if it proceeded from the will of the parties, you were to terminate the cause; otherwise, you were to remit it, sufficiently instructed, to the examination of the Apostolic See together with the aforesaid indulgence.

They said that these later letters were not valid because they had been obtained by the same V. after revocation of his mandate. Since, according to the statutes of the General Council, apostolic letters which someone obtains without his lord's special mandate ought not to be valid unless he is among the persons from whom a mandate is not by law to be required, we command you that, if the revocation of the mandate came to the proctor, then—because letters obtained by one from whom the

lord has revoked his mandate ought to possess less validity—you proceed in the affair according to the contents of the earlier letters, notwithstanding the later ones.

Chapter XXXIV

Latin source headnote: A rescript obtained against a man of one diocese does not extend to a man of the same name from another diocese.

The same to the Dean and Master G., Canon of Liège.

Know that we have learned from the report of V. that, when R. obtained letters to judges against V. of the diocese of Reims concerning certain cloths and other things, that same V. proposed by way of exception that, since he was not of the diocese of Reims but of Liège, he could not and ought not by law to be sued under letters of this kind, since they made no mention of the diocese of Liège. Because they refused to admit this exception, he appealed to our hearing. Therefore we command you, if matters stand thus, after revoking as void, etc.

Chapter XXXV

Latin source headnote: Through a rescript obtained against the men of a diocese, men of the city cannot be sued.

The same to the Prior of Saint-Laud and the Succentor of Rouen.

Ralph, a cleric and rector of the church of Saint Christopher in the city of Sées, showed us by his representation that, when Master R. sued him before the judges of certain letters concerning that same church under the general clause "certain others"—letters obtained from us against the Bishop of Sées and certain others of the diocese of Sées concerning revenues and other property—the same rector proposed by way of exception that, since he was from the city of Sées and no one of the city itself was understood to be included under that clause, he could not be sued through it. Because the said judges refused to admit this exception, he appealed to our hearing. Therefore we command you, if matters stand thus, to revoke as void, etc.

Chapter XXXVI

Latin source headnote: If a person who was to be sued under a general clause dies while the matter remains untouched, his successor cannot be sued.

The same to the Abbot of Saint James.

The Countess of Namur reported to us that, when on the death of her brother the count she succeeded to his county, G. and B., through certain apostolic letters obtained against the Bishop of Toul and certain other clerics and laymen, sued her before the judges for whom those letters had been obtained, under the general clause "certain others," concerning a certain sum of money which they said that they had lent to her brother, because she had succeeded to the aforesaid county.

Her proctor therefore raised the exception that, because the brother of the same woman was still living when those letters were obtained and had not been summoned to judgment by them while he lived, she could not be sued by their authority. Because the judges would not admit her exception, she appealed to our hearing. (*And below:*) Therefore we command you, if matters stand thus, after revoking as void, etc.

Chapter XXXVII

Latin source headnote: Executory letters in which the person obtaining them falsely said that admonitory letters had preceded are not valid.

The same to the Abbot of Saint Victor.

We learned from the representation of the Bishop of Amiens that the cleric I. obtained preceptory letters directed to him concerning provision for I., and afterward executory letters against him directed to you. (*And below:*) Therefore we command you that, if no admonitory letters concerning this preceded, you suspend the same executory letters, provided that those executory letters made mention of the admonitory ones; otherwise, proceed in the affair of execution, with reason going before, according to the mandate directed to you on his behalf.

Chapter XXXVIII

Latin source headnote: When qualifying clauses are absent, in a doubtful case the Pope does not intend to burden the same collator with provision for two persons; therefore the second person obtaining letters is repelled, whether the first is awaiting provision or has already obtained the favor. This it says according to the understanding of the Gloss.

The same to the Bishop of Noyon.

You are not bound to prosecute the apostolic mandate directed to you—that you cause Master S. to be received as a canon and brother of the church of Noyon, if we have not written there on behalf of another person who is pursuing a favor of this kind—when another person has already obtained a benefice through our letters, since it was not the intention of the mandator that the aforesaid church be burdened with the reception of two persons.

Chapter XXXIX

Latin source headnote: A church to which one Pope first gave admonitory letters and another gave executory letters is understood to be burdened by the first Pope, not by the second.

The same.

Apostolic letters having been directed to you that you should receive the cleric G. as a canon and brother unless your church had been burdened by us on behalf of another, we will and command you to execute our mandate, notwithstanding that through our executory letters you received T. the subdeacon, who had obtained admonitory letters from our predecessor H. of good memory, since we were prosecuting the act of our predecessor rather than our own.

Chapter XL

Latin source headnote: A diocesan to whom it is written that he provide, or cause provision to be made, in his diocese where it has not been written on behalf of another cannot execute this concerning a benefice belonging to the collation of another who has already been burdened on behalf of someone else.

The same.

The rule of law does not permit an abbot who has already received an apostolic mandate that he provide for the cleric S. in one of the churches of his monastery to be compelled, by virtue of general letters obtained to the diocesan bishop that he cause provision to be made in his diocese where it had not been written on behalf of another, or to be burdened further concerning the conferral of churches or benefices, even if by those letters the diocesan has power to make provision.

Chapter XLI

Latin source headnote: By a rescript directed to the person who imposed an excommunication, ordering him to absolve the excommunicated person if he excommunicated him contrary to the council, with executors appointed to execute it if he does not obey, cognizance is committed not to the person who imposed the excommunication but to the executors.

The same.

When an excommunicated person who asserts that he was bound contrary to the statutes of the General Council obtains letters to the person who imposed the excommunication, ordering that person, if matters stand thus, to absolve him without difficulty, and other judges are appointed to execute the apostolic mandate if he does not obey, cognizance is committed not to the person who imposed the excommunication—who ought to be certain concerning his own act, although deference is shown to him in this—but to those judges.

Chapter XLII

Latin source headnote: If a person obtaining a rescript for a benefice said that he had no benefice when nevertheless he had one, although a small one, the rescript is not valid.

The same.

If, when someone proposes that he has not yet obtained an ecclesiastical benefice, an apostolic rescript concerning provision for him is obtained which makes no mention that he possesses one, although it is less than sufficient, we declare that rescript invalid as fraudulently obtained.

Chapter XLIII

Latin source headnote: Those who abuse an apostolic rescript in the cases enumerated here are deprived of the benefit of the rescript and condemned to pay their adversary's costs and damages.

The same to the Bishop of Paris.

Because certain persons abuse apostolic letters in various ways, we establish that the following shall be deprived of the benefit of those letters and condemned to pay their adversaries the moderate expenses and damages which it is established they sustained on this account:

- those who deliver letters obtained in their own name to others of the same name, who unduly weary through those letters whomever they wish;
- those who receive them in this manner;
- those who cause persons against whom they have no dispute to be summoned to judgment;
- those who extend the letters to future controversies which had not yet arisen at the time they were obtained;

- those who draw anyone concerning one affair—or even maliciously concerning several personal actions which could more conveniently be tried before one judge—before different judges through various letters, so that, wearied by labor and expense, he may be compelled either to make a settlement or to yield his right; and
- a defendant who causes the claimant to be cited at the same time to different places, or without specification to a town which has a name in common with several towns of the same province, so that, when he does not appear, he may be excommunicated as contumacious and thus repelled from his claim.

Title IV: On Custom

Chapter I

Latin source headnote: A custom imposing a burden upon churches ought to be removed by the office of the judge. This it says according to the more particular interpretation.

Gregory I, in the Register.

It befits us, through our consideration, to relax customs which are known to impose a burden upon churches, [nor there, etc.]

Chapter II

Latin source headnote: By custom an act or solemnity can be introduced through which possession of an absent thing is transferred without an actual taking of possession. This it says, and according to Abbas Siculus it is a singular case.

Innocent III to the Archbishop and Chapter of Lund.

From the letters which you, brother archbishop, sent to us, we have clearly understood that the kingdom of Denmark, as regards matters pertaining to the law of the forum, is governed entirely by its own customs and the institutions of its kings. Hence it happens that the province has no use of wills of the kind that elsewhere is observed according to legal practice in the last dispositions of the dying.

But if anyone, while in good health or when making his last disposition, wishes to confer certain possessions upon cloisters or other religious places for the remedy of his sins, you state that this is the form of conferring them upon a church: in donations of this kind, it is customary for a small quantity of earth to be taken in the hand, or in the edge of a cloak held by the hand of the bishop or of any other prelate of the church, or, wrapped in a small cloth, to be placed with due humility upon the altar itself before witnesses who see and hear, according to the said form, which in the vernacular is called *scotatio*.

But because, as you assert, a donation of this kind is maliciously obstructed by certain quibblers, you humbly petitioned us to provide with paternal solicitude that religious places and churches upon which many possessions have been conferred under such *scotatio* cannot or ought not rashly to be disturbed by anyone. Therefore, unwilling that such constitutions—which, as you assert, length of time has maintained and the practice of a custom hitherto approved has preserved—should be weakened by any temerity, we command your discretion by apostolic writings to cause donations of

those things which, by virtue of the custom, are piously and providently conferred, or have already been conferred, upon cloisters, churches, or any religious places to be irrevocably observed, since a sign of this kind, which is called *scotatio*, is clear evidence not so much of a donation made as of possession delivered. If you find any contradictors or rebels, relying upon apostolic authority you are to restrain them through ecclesiastical censure, warning having first been given and the obstacle of appeal removed. [Given at the Lateran, on the sixteenth day before the Kalends of December, 1198.]

Chapter III

Latin source headnote: A custom by which the declaration of the people is held as a judgment in ecclesiastical causes is not valid.

The same to the Bishop of Poitiers.

You should know that it has come to our hearing that in your diocese, even in ecclesiastical causes, a less than reasonable custom is observed: when some cause is tried there and the allegations and complaints of each party have been heard, those present—learned and unlearned, wise and foolish—are asked what the law is; and what they, or any one of them after seeking the counsel of those present, have declared is held as the judgment.

We therefore, considering that a custom which conflicts with canonical institutions ought to have no weight, since a judgment rendered by one who is not the proper judge obtains no validity, grant you by authority of the present writings, notwithstanding the aforesaid custom, the power to render judgment in the ecclesiastical causes of your subjects, after their merits have been established before you, as the order of reason requires. [Therefore let no one, etc. Given at the Lateran, on the twelfth day before the Kalends of March, 1199.]

Chapter IV

Latin source headnote: Custom cannot have the effect that a cleric who is not a bishop can exercise those things which are reserved to the episcopal order. And this is a notable case. Abbas Siculus.

The same to L., our Vicar stationed at Constantinople.

The higher the place which you obtain from the benignity of the Apostolic See, the more solicitously you must take care to show yourself such in your actions, turning aside neither to the right nor to the left, that you may be seen to discharge the apostolic office no less in reality than in name.

It has indeed come to our hearing that certain simple priests at Constantinople presume to administer to the faithful those sacraments which from the time of the Apostles have duly been reserved to bishops alone. Such is the sacrament of confirmation, which bishops alone ought to confer through the imposition of hands upon those reborn by anointing them with chrism. In order to devise excuses for sins and nourishment for their own error, these priests put forward custom alone, although length of time does not diminish sins but increases them, and they become the graver the longer they hold an unhappy soul bound. Wishing, therefore, that these and other things which offend the eyes of the divine majesty be rooted out of the Lord's field, we command your discretion by apostolic writings, by way of precept, strictly to prohibit all Latin priests stationed at Constantinople from hereafter presuming upon such things by their own temerity.

Although these things are not to be despised by the faithful, it is nevertheless safer that, without danger, they be omitted from necessity—which has no law—than that they be conferred in vain, not without grave danger, by those to whom it is not lawful to confer them, out of temerity—which is condemned by law—since a certain shadow is displayed in the act, but the truth does not follow in the effect. [Others also, etc. Given at the Lateran, on the sixteenth day before the Kalends of December, 1199.]

Chapter V

Latin source headnote: A custom by which a sentence of interdict is violated is not valid.

The same to the Dean and Chapter of Le Mans.

When a dispute arose between you on the one side and the canons of Saint-Pierre-de-la-Cour on the other concerning the fact that the said canons of Saint Peter did not observe a general interdict imposed in the city of Le Mans by our venerable brother your bishop or by you, each party sent its messenger to the Apostolic See so that the same cause might be terminated by a due conclusion. The parties, therefore, having appeared in our presence through suitable proctors, we granted them a free and benign hearing.

The proctor of your church stated that, when the church of Le Mans wishes at a fitting time and place to subject the city to an interdict because of the excesses of the secular power, the church of Saint-Pierre-de-la-Cour, like a member not adhering to its head, has not failed to celebrate the divine offices with bells rung and doors open while the others ceased. When our venerable brother Octavian, then Bishop of Ostia, was exercising the office of legation in those parts, they approached his presence and took care to set forth their complaint to him concerning this. Having summoned the parties and diligently heard and considered the arguments of each, since the party of the church of Saint Peter could not show that it was protected by privileges of the Apostolic See, and since it was firmly established before him that they were led to this by pride rather than by a reasonable cause, he definitively determined that, when an interdict had been imposed in the city of Le Mans, that church should observe it. He also subjected to the bond of excommunication and the penalty of order and benefice those who considered that his judgment should be resisted.

Afterward, when the entire city of Le Mans was subjected to ecclesiastical interdict because of certain excesses of the secular power, and the canons of Saint Peter were notified to cease from the celebration of divine offices and to observe the interdict as did the other churches of that city, they added greater temerity to their audacity and performed their office with greater solemnity, not fearing to act against the judgment of the legate.

Their proctor, however, alleged on the opposing side that the church of Saint Peter had been free and exempt from its foundation and had been founded and endowed from the goods of the progenitors of our most dear son in Christ, John, illustrious King of the English. He firmly asserted—and believed that he established his claim by this—that the same king and his progenitors conferred the deanery and prebends of that church without consulting the diocesan bishop. He also alleged that the church had hitherto enjoyed such freedom by custom and that your bishop had acknowledged this many times: namely, that you could place under interdict the parochial chaplain who celebrated outside the choir of the aforesaid church. Concerning the aforesaid custom he alleged that, even under a general

interdict, it was lawful for them to celebrate the divine offices with bells rung and in a loud voice, provided that those under interdict and those excommunicated were excluded.

We therefore, recognizing that the sinew of ecclesiastical discipline would be broken by such a custom, if any such custom existed, have considered that it should be wholly invalidated with the consent of our brothers, since it is to be regarded not as custom but rather as corruption. We nevertheless grant the same church of Saint Peter, from the benignity of the Apostolic See, that when a general interdict has been imposed in the city it shall be lawful for them to celebrate the divine offices with doors closed, those excommunicated and under interdict excluded, without bells being rung, and in a subdued voice. [Therefore let no one ... of our definition and concession ...] If anyone, however, [should infringe] the sentence of our definition, etc. [Given on the third day before the Nones of February, in the eighth year of our pontificate, 1206.]

Chapter VI

Latin source headnote: In assigning offices to a new dignity, the custom of neighboring cities is observed. If their customs differ, the more reasonable one, which prejudices no one else, shall be observed.

The same to the Bishop of Ely.

When formerly our venerable brother the Bishop of London intimated to our ears that he proposed to establish a precentor in his church and to assign him a fixed revenue without injury to anyone, we, inclining to his prayers, granted him permission to institute such a precentor, provided that prejudice should be inflicted upon no one in conferring revenues upon him. We nevertheless established that the precentor so instituted should have in the church of London, in sittings, processions, and other matters, the dignity which other precentors have in other English churches.

Afterward it was intimated to our ears that, although the same bishop had instituted our beloved son B. as precentor in that church, he had not taken care to execute what had been established by you concerning the aforesaid dignity, although two years had already elapsed. Therefore we commanded you not to postpone executing it, after removing the obstacle of any contradiction and appeal, restraining contradictors through ecclesiastical censure.

Recently, however, our beloved son the dean and certain others holding personates in the aforesaid church transmitted their complaint to us: customs differ among the English churches, and some precentors have a lesser dignity while others have a greater; nor can their dignities, since they are either diverse or conflicting, be combined into one. Yet the man newly instituted as precentor in the church of London, not content with what he can have without prejudice to others, strives on occasion of our letters to arrogate to himself, to their prejudice, certain dignities belonging to the dean and other persons of that church.

Therefore we command your fraternity by apostolic writings that, if you know that precentors have different dignities in the English churches according to the different customs of the places, you cause the said precentor to have in the church of London that dignity, and, appeal being removed, to remain content with that dignity, which he can obtain without prejudice to another while the reasonable and approved customs of the church are preserved. [Given at the Lateran, on the second day before the Nones of February, in the eleventh year of our pontificate, 1208.]

Chapter VII

Latin source headnote: It cannot be introduced by custom that anyone may relinquish a dignity without the permission of his superior, or that a person who has been elected may administer without having received confirmation from the superior.

The same to the Convent of the Monastery of Corvey.

When our venerable brother the Bishop of Ostia and our beloved son L., cardinal-priest of the title of Holy Cross, were formerly exercising the office of legation in the regions of Germany, they found that the abbot of the monastery of Herford—which is known to belong immediately to the Roman Church—had migrated by his own temerity to the monastery of Corvey, which is likewise a special possession of the Roman Church, without either obtaining or seeking permission to leave the former monastery or confirmation from us or from those who were then exercising our office in those regions.

[When he had come to Nordhausen to receive the regalia, although those legates were present there, in order that his contempt might appear the more manifest he took no care to approach them, showing himself in every way a despiser of their mandates. For this reason the said legates firmly commanded our venerable brother the Bishop of Paderborn to summon him into his presence and, after all the aforesaid matters had been set forth more diligently before him, not to delay suspending him from every office and benefice until he presented himself before us to seek pardon for his contempt.

But when he sent his messenger into their presence and excused himself through that messenger concerning all the aforesaid matters, he alleged in his defense the general custom of that land. He asserted that neither the Supreme Pontiff nor his legates were in any way required for confirmation of an election, for obtaining a blessing, or for permission to pass from one monastery to another, since such a custom had hitherto been observed in those regions.

The same legates, however, induced by the prayers of many ecclesiastical and secular princes who most urgently petitioned them on his behalf, relaxed the aforesaid sentence. They commanded the Bishop of Paderborn not to delay enjoining the aforesaid abbot to send his messengers to the Apostolic See by the recently past Sunday on which *Laetare Ierusalem* is sung, in order to receive our mandate concerning this and the other matters through those messengers. If he should perhaps neglect to do this, the bishop was thenceforth not to delay returning him to the former sentence and causing it to be firmly observed.]

Afterward, when he had sent his messengers to the Apostolic See, those messengers, wishing to excuse him in many ways, alleged in his defense the general custom of that land. Since this is rightly to be considered not so much a custom as a corruption, being plainly hostile to the sacred canons, we command that it not be observed hereafter. [Given at the Lateran, on the fifth day before the Nones of May, in the eleventh year of our pontificate, 1208.]

Chapter VIII

Latin source headnote: It can be introduced by custom that one church is bound to elect for itself a prelate from the body of another. And custom is the best interpreter of laws.

The same to the Dean of Salisbury, A. the Archdeacon, and Master P. Penetel, Canon of Paris.

When our beloved son William, a monk of the church of Andres who presented himself as the elect of that same church, and G. Daubins, a monk and proctor of the monastery of Charroux, litigated against one another in our presence concerning the right of electing an abbot in the monastery of Andres and concerning the election of that same William, William petitioned that his election, celebrated unanimously by the brothers of the church of Andres, be confirmed by apostolic authority. He asserted that, both by common law and by a special privilege granted to them by Pope Alexander of happy memory and afterward confirmed by us, the free authority of electing belonged to those brothers alone.

For by common law every congregation of monks ought to elect an abbot for itself; and it is contained in the privilege of that same Alexander that, when the abbot of the monastery of Andres dies, no one is to be set over it by any cunning of subreption or violence except the person whom the brothers, or the sounder part of them, consider should be elected according to God and the Rule of blessed Benedict. It is also known that we granted the aforesaid brothers that, when their church happens to be vacant of an abbot, it shall be lawful for them by a regular election to set over themselves as pastor a suitable person from the body of that church or from elsewhere, who is to be presented to the monastery of Charroux so that he may receive confirmation from it and show it the reverence which he owes.

The said proctor Geoffrey alleged on the opposing side that formerly, at the petition of Count Baldwin, his wife, and his sons, patrons of the church of Andres, it had been established by G., Bishop of Thérouanne of good memory, that, if the aforesaid place should flourish so greatly by divine favor that a prior or abbot were established there, his election should rest with the brothers of that place and the chapter of Charroux. Under cover of this statute it had been observed from times long past that, when the monastery of Andres was vacant, the brothers of Andres elected for themselves as abbot, in the chapter of Charroux, someone from the body of the monastery of Charroux. Therefore, because the aforesaid election of William had been attempted less than canonically, both contrary to the tenor of the statute and contrary to approved custom—which is the best interpreter of laws—it deserved to be quashed; and the aforesaid brothers should be commanded to proceed to the election of an abbot according to what had hitherto been observed.

[He added that neither the privilege of our aforesaid predecessor nor our confirmation could prejudice the monastery of Charroux, since they had been obtained by subreption without any mention at all of the aforesaid statute and approved custom. The same G. further alleged that the said election should be quashed for another reason also: namely, because it had been celebrated both by persons under interdict and concerning a person under interdict.

For when Lambert, Bishop of Thérouanne of good memory, commanded the aforesaid brothers—as we perceived was contained in his open letters—to go within the space of eight days to the monastery of Charroux, from whose body they ought to elect an abbot, and there to elect as they ought, and warned them that, if they did not do so, they should know themselves to be suspended from every office and benefice and from entry into churches, they despised the bishop's mandate and refused to elect within the appointed time as they ought. Therefore, since after the expiration of the term they began to be bound by the sentence of suspension, the election afterward presumed by them ought to be adjudged invalid.

To this it was answered on the opposing side that, since the monks of Andres were by no means bound to elect in the aforesaid manner, they were not bound to obey the bishop when he peremptorily commanded this without cognizance of the cause; and therefore the aforesaid sentence of interdict could not bind them, as having been promulgated less than reasonably—especially since, within the term established by the bishop, they had gone to the monastery of Charroux and sought permission to elect from their own monastery, although they were unable to obtain it. Against this the other party replied that, even if the said sentence had perhaps been less than just, they were nevertheless bound humbly to obey it, since it had been promulgated by the diocesan bishop.]

Having therefore perceived clearly these and other matters proposed before us on each side, because it was established before us that the election had been celebrated by suspended persons and concerning a suspended person, we quashed it, as justice required, with the counsel of our brothers. [As a precaution, however, we considered that the sentences of excommunication and suspension against William himself and the other monks of Andres, and the sentences of interdict against their churches, promulgated after an appeal to us had been interposed by our venerable brother the Bishop of Senlis and his co-judges, should be relaxed.]

Moreover, since the aforesaid statute—namely, that the election of the abbot should rest with the brothers of that place and the chapter of Charroux—could soundly be understood in such a way that neither common law nor [apostolic] privilege would be derogated by it, namely, that the election of the abbot should belong to the aforesaid brothers and confirmation to the chapter of Charroux, we command your devotion by authority of the present writings, after hearing what is proposed on each side, that, if such a custom as prejudices common law is proved on behalf of the monastery of Charroux, you decree in this respect that the election of the abbot of Andres is hereafter to be made according to that custom.

Otherwise, if no such custom is proved through which common law is prejudiced in this case, you are to take care, after removing the obstacle of appeal, to adjudge to the monks of Andres the right of electing an abbot, so that hereafter they may have free power, through canonical election, to elect as abbot a suitable person either from the body of their own church or from elsewhere. He is to be presented to the chapter of Charroux so that, if the [election] is canonical, it may be confirmed by that chapter. [Moreover, etc. Given at the Lateran, on the third day before the Nones of January, in the eleventh year of our pontificate, 1209.]

Textual note: Friedberg's lemma reads *clerico*, but the apparatus records *electo*. The latter is adopted here because William appears as the person elected abbot and the litigation expressly concerns his election.

Chapter IX

Latin source headnote: A chapter cannot, without the bishop, make new statutes or customs or alter old ones.

Honorius III to the Chapter of Paris.

Since the authority of custom and long-standing usage is not slight, and innovations very often produce discord, by authority of the present writings we prohibit you from altering the constitutions of your church and your approved customs, or even introducing new ones, without the counsel and

consent of our venerable brother your bishop. If perhaps you have made any to the prejudice of that bishop since he obtained the governance of the church of Paris, we decree them invalid. [On the sixth day before the Nones of March, in the fifth year of our pontificate, 1221.]

Chapter X

Latin source headnote: A custom by which someone is induced to sin or to dissipate his own goods is not valid.

The same to the Mayor and Burgesses of La Rochelle.

It was proposed before us on your behalf that two abusive customs have hitherto been observed in your country. First, if a native or a foreigner, through the vice of prodigality, through carelessness, or through any other circumstance, should dissipate or lose all his own goods, he alienates at the choice of his own will the goods of his wife—however praiseworthy and honorable her life—both movable and immovable. Consequently it sometimes happens that, when the husband has died, the wife remains without a dowry and the surviving children are subjected to the extreme hardships of poverty.

Second, if a man marries a wife who, violating the fidelity of marriage, manifestly commits adultery, she nevertheless shamelessly demands and wickedly takes half of all the goods which her husband acquired, although she ought rather to be deprived of all her husband's goods. You therefore humbly petitioned that provision be made for you concerning these matters by the Apostolic See. Accordingly, wishing providently to counsel your salvation and advantage, by the tenor of the present writings we declare that you are not bound to observe customs of this kind, as being contrary to law.

Chapter XI

Latin source headnote: Custom does not derogate from natural or divine law, the transgression of which induces sin; nor does it derogate from positive law unless it is reasonable and has been established by prescription.

Gregory IX.

Since sins are the graver the longer they hold an unhappy soul bound, no one of sound mind understands that natural law—the transgression of which induces peril to salvation—can in any way be derogated by any custom, which in this respect is more truly to be called a corruption. Although the authority of long-standing custom is also not insignificant, nevertheless it shall not have force to such an extent that it ought to generate prejudice even against positive law, unless it is reasonable and has been lawfully established by prescription.

Title V: On the Postulation of Prelates

Chapter I

Latin source headnote: One who violates an interdict cannot be postulated. This it says in relation to the title; for it contains many other statements which do not pertain to the title.

Innocent III to the Dean and Chapter of Sens.

To these matters in blessed Peter ... (*And below:*) Indeed, since the church of Sens has always been devoted to the Roman Church, not undeservedly do we share in the suffering of that church and grieve with its sorrows, since it has been bereaved of a pastor who, although noble by birth, was nevertheless, as we believe, nobler in holiness. (*And below:*) We grieve further that another grief has supervened upon the excessive grief which the church of Sens had conceived at the death of so great a father. For when it had scarcely risen from the funeral office for so mournful a death, and the obsequies of so great a father had scarcely been worthily celebrated, the king himself, unjustly moved, occupied the possessions belonging both to the table of the archbishop and to that of the canons—not as was fitting or as he ought, but as he wished and was able—and also compelled into exile the persons who, by our mandate, had suspended their organs. (*And below:*)

Since, because of the imminent persecution and the distrust of minds—which zeal sometimes excites in such matters and practice excuses—you could not readily come together in one place and purpose, and an appeal had been made to us by certain persons, at length, not without difficulty, you assembled together and unanimously postulated the Bishop of Auxerre as archbishop. You set forth your postulation through Master R., your precentor, a man learned in both laws, honorable, provident, and discreet, who faithfully prosecuted before us the affair of the promotion undertaken and omitted nothing pertinent; through the abbot of Saint Peter; and also through your letters. You humbly requested that we provide apostolic favor and pious assent to the translation to be made, especially in consideration of the persecution which presses generally upon the Gallican Church and of the necessity which lies particularly upon the church of Sens.

But before the same master had approached the Apostolic See, we had heard from many persons—indeed, it was almost established before us as certain—that the same bishop had not observed the sentence of interdict. The same master did not deny this when questioned by us in our presence and that of our brothers. In excuse of the bishop, he alleged that the bishop was in no way bound to observe the sentence rendered, since it had come to his knowledge neither through our letters, nor through our beloved son P., cardinal-deacon of Santa Maria in Via Lata and then legate of the Apostolic See, who had promulgated that sentence, nor through the mandate or letters of the executor appointed for this purpose; that the king himself had no land of his own in the diocese of Auxerre; and that the same diocese of Auxerre had been placed under interdict for another cause.

[But the messengers of the Archbishop of Reims and of certain others had earlier approached the Apostolic See, putting forward certain frivolous occasions to devise excuses for sins: namely, that the said legate, after an appeal to us had been interposed—to which he had seemed to defer—had rendered the sentence of interdict against the king's land when already outside the boundaries of the kingdom of the Franks; that he had exceeded the proper measure in executing it; and that his letters had not reached certain of them. But if they had considered the truth more diligently, since they knew that a net is cast in vain before the eyes of winged creatures, just as they could not, so they ought not to have excused themselves in this way, since the excuse is turned rather into an accusation.

For although the cardinal himself had departed from the kingdom of the Franks, he had not yet passed beyond the boundaries of his legation, since he had received from us the solicitude of the legation entrusted to him not only in the kingdom of the Franks but also in the provinces of Vienne, Lyon, and Burgundy. Moreover, he did not issue the said sentence of interdict but rather published it;

nor was he its author, but more truly its executor. Hence, since according to canon and civil law it is not lawful to appeal from executors unless perhaps they exceed the proper measure in executing, and since in the letters directed to him concerning this we took care to prohibit the obstacle of appeal, deference was not to be shown to an appeal of this kind. The cardinal certainly did not defer to it, but rather delayed so that he might more conveniently fulfill our mandate elsewhere.

Meanwhile it was not for them to interpret our mandate or to challenge the cardinal's interpretation, since they ought rather to have trusted him. When he departed from us he understood more fully the good pleasure of our will concerning the mandate, and he received our mandate from us, through which the meaning of our mind was more clearly revealed to him. Moreover, in doubt the way of obedience was to be chosen as the safer course rather than at last declining into disobedience, since according to the testimony of the prophet, refusing to acquiesce is the sin of divination and refusing to obey is the crime of idolatry.]

Nor is it sufficient—indeed, it does not avail—for the excuse of the aforesaid Bishop of Auxerre and others like him that they allege that our mandate, and that of the cardinal himself or even of the executor, did not reach them through special letters directed to them or through a special mandate. For the same cardinal solemnly and publicly promulgated the sentence of interdict in the presence of many archbishops and bishops, and that sentence of interdict had already begun to be publicly observed by many in the kingdom of the Franks. Nor, when a constitution is solemnly issued or publicly promulgated, is it necessary to impress knowledge of it upon the ears of individuals through a special mandate or letters. It is sufficient that a person who knows it to have been solemnly issued or publicly promulgated is bound to its observance. Canonical authority likewise teaches, against certain persons who did not observe the Council of Sardica on the ground that they did not have or receive it, that they are not readily granted the faculty of believing this, since the same council had been enacted and received among them in their regions.

Nor does the claim avail that the said king is said to have no land of his own in the diocese of Auxerre, since we commanded that all the king's land be subjected to interdict, and the cardinal, interpreting our mandate, promulgated the sentence against the land which at that time adhered to the king. But if the bishop's diocese had been placed under interdict for another cause, he was both more strongly bound and more easily able to observe the sentence of interdict.

It is, however, clearly established from this that the often-mentioned bishop cannot be sufficiently excused: he knew that his metropolitan church had both received and observed the sentence of general interdict. He had therefore been one of those who, deliberating concerning that sentence, decreed by common counsel—although they erred—that they would not observe it. If they had considered more diligently the word of the Apostle Peter concerning Clement, they ought not to have awaited an admonition concerning this, but to have complied prudently and obeyed humbly.

We therefore, who according to the Apostle are ready to avenge every disobedience, have considered the disobedience of the same Bishop of Auxerre, lest obedience should seem to profit the humble nothing if contempt did not harm the contumacious. Since according to the canonical sanctions there are certain faults in which it is a fault to relax punishment, after diligent deliberation concerning this with our brothers, however much we wished to defer to you as sons of obedience, we nevertheless rejected a postulation of this kind as unworthy—not because of the church making the postulation, but because of the person postulated.

Although, because you postulated a man who was not suited to your purpose—since you observed the sentence of interdict but he nevertheless despised observing it—you readily abused the power permitted to you, and for that reason we could not undeservedly deprive you of it, since according to the decree of divine law it is not lawful to put on a garment woven of wool and linen, nevertheless, lest we seem ungrateful for your devotion, from the customary benignity of the Apostolic See we grant that you may provide for yourselves and for the same church through a suitable postulation or a canonical election of a fitting person.

Chapter II

Latin source headnote: One who renews a postulation quashed because of a defect in the person is deprived of the power of electing and postulating.

The same to the Bishop of Ostia, Legate of the Apostolic See.

We regard it as pleasing and acceptable, and greatly commend your fraternity, that you prudently and effectively attended to the promotion of our venerable brother P., formerly Bishop of Cambrai but now Archbishop of Sens. We learned from your letters that you commanded the canons of Sens—whose postulation had been quashed by our authority, although they had fraudulently suppressed the letters of quashing—to proceed concordantly and canonically to an election. You also added that, unless perhaps they concordantly directed their votes to such a person as ought deservedly to obtain your assent, you would afterward do concerning provision for that church what you believed expedient.

When many of them strove once again to renew the postulation quashed by us, while certain others postulated the Bishop of Cambrai as archbishop, you understood that those who wished in some manner to revoke our quashing had lost the privilege of electing, because they rashly abused the power granted to them from the benignity of the Apostolic See. For that reason, the license of electing or postulating had devolved upon the others, who, although fewer in number, were, so far as this matter was concerned, sounder in counsel. At their insistence, relying upon apostolic authority, you provided the aforesaid Bishop of Cambrai as their pastor and appointed him to the governance of the church of Sens.

We therefore hold this the more pleasing and ratified insofar as, in his promotion, you proceeded by our mandate and good pleasure. We have released him from solicitude for the church of Cambrai so that he may more freely exercise care of the metropolitan church of Sens, confirming by apostolic authority what was done by you at our mandate.

Chapter III

Latin source headnote: A postulation by which a private or lesser advantage is preferred to the common or greater advantage, or which is made by less than a third part of a college, ought not to be admitted.

The same to the Clergy of the Church of Ravenna.

When William, your archbishop of good memory, had entered upon the way of all flesh, you intimated his death to us through your letters. We commanded you to elect canonically as your pastor a suitable person who would persist in devotion to us. Afterward, when, having received our

letters, you treated concerning the election of a pontiff to be substituted, your votes were divided in different directions. For certain of you postulated our beloved son S., cardinal-priest of the title of Saint Praxedes, while certain others postulated our venerable brother the Bishop of Imola.

When the parties had presented their postulations to us through their messengers, those who had postulated the aforesaid cardinal alleged that more than two-thirds of you had agreed upon him. The other party, however, alleged that the more worthy persons had postulated the Bishop of Imola, and that both canonical form and the tenor of the compromise had been observed in his postulation, since, as a suffragan of the church of Ravenna, he had been postulated from its own body. For it had been committed by compromise that they should elect a suitable person from the body of the church or archbishopric of Ravenna. The other party asserted that this was frivolous, since, even if such a condition had been added, the aforesaid person could nevertheless be postulated from the college of the Roman See on account of its privilege, since the members of the head ought not to be regarded as foreign to the members of the body.

We therefore, having heard what had been proposed on each side concerning the facts and what had further been alleged concerning the law, deliberated with our brothers and also took care that fuller argument be made for each party. We considered that the presence of that cardinal would be more useful not only to the Roman Church but also to the universal Church at the Apostolic See than at the church of Ravenna, and that in an emergency of this kind it was of greater merit to go before the army of Jesus Christ in aid of the Holy Land than to assume the burden of the pastoral office. Hence, not undeservedly preferring the common advantage to the particular and the greater to the lesser, we did not consider that the aforesaid cardinal should be granted to your postulation.

Considering on the other side that the aforesaid Bishop of Imola had been postulated by less than a third part, and that the Apostolic See has not been accustomed to receive postulations of this kind amid so great a division and contradiction—since even when someone is postulated unanimously by others, it is moved to admit their postulation not so much by justice as by grace—we did not consider that his postulation should be admitted.

We therefore admonish and earnestly exhort your discretion, and command by apostolic writings, that within one month after receiving the present writings, together with those who are known to have a voice in the election, you take care to agree concordantly, through a canonical election, postulation, or nomination, upon a suitable person who will persist in devotion to the Roman Church, and that you present your election, postulation, or nomination to the Apostolic See through suitable messengers. Let those messengers come prepared so that, if perhaps—which God forbid—your act must be rejected as justice requires, they may receive the man whom we shall provide for you as pastor. Otherwise, since we desire to provide for that church with greater solicitude, we shall by no means omit to take care to assign it a suitable pastor by apostolic authority.

Chapter IV

Latin source headnote: An archbishop is postulated as archbishop. And once a postulation has been presented to the Pope, those making the postulation cannot withdraw from it, but the judgment of the superior must be awaited. This it says in relation to the title.

The same to the Provost and Chapter of Esztergom.

When William, your archbishop of good memory, had entered upon the way of all flesh, you unanimously directed your votes toward postulating from us our venerable brother the Archbishop of Kalocsa, and you obtained royal assent concerning this. The suffragans of the church of Esztergom, namely the Bishop of Pécs and certain others, took care to oppose your postulation, asserting that it had been attempted in contempt of them, although they had the right of electing with you. Your messengers alleged on the opposing side that the assent of the suffragans had many times been sought as a matter of favor concerning the appointment of a pontiff for you, but that they denied you [both counsel and assistance].

When the messengers had appeared in our presence and the adversaries had proposed certain other matters against the procedure of your postulation—which we remember that we expressed more fully in earlier letters—because the matters proposed were not established before us, we considered that provision should be made as follows. If, while the suffragans persisted in their opposition, you wished to press your postulation, you were to come to the Apostolic See by suitable proctors sufficiently instructed concerning all matters by the then next Septuagesima, so that, with each party present, we might establish what justice advised. But if they ceased from their opposition and you persisted in your purpose, you were to send suitable persons into our presence within the aforesaid term who would make us more certain concerning the pertinent matters. But if, while the aforesaid bishops opposed you, you should happen to distrust your right, lest you undergo labor and grief in vain, you were canonically to provide another suitable person for yourselves as pastor.

But when [H.], King of Hungary of illustrious memory, had entered upon the way of all flesh, certain of you rashly withdrew from your postulation, which you had presented to us in common, while others persisted in it and appealed to the Apostolic See; and those withdrawing postulated the aforesaid Bishop of Pécs as archbishop. None of the suffragans assented to their votes except the Bishop of Nitra alone. And although our dearest son in Christ A., illustrious King of Hungary—then duke and governor of the kingdom of Hungary in the name of King L., his nephew, whose guardianship and the care of the kingdom had been committed to him by his brother—sent to us the first fruits of his prayers on behalf of the aforesaid postulation of the Archbishop of Kalocsa, he afterward humbly petitioned us by his letters that the Bishop of Pécs be transferred to the metropolitan church of Esztergom.

We therefore did not consider that the latter postulation should be admitted, as justice required, because we found that it had been rashly celebrated after appeals had been interposed, amid great disagreement not only among the suffragans but also among the canons of the church of Esztergom, contrary to the form of our mandate, and with regular order omitted. Instead, we commanded you to take care, within one month after receiving our letters, to proceed to provide yourselves a suitable pastor through canonical election or concordant postulation, after seeking the assent of the suffragans if by ancient and approved custom it was required. Otherwise, from that time onward, lest pastoral care be lacking any longer to the Lord's flock, we ourselves would provide for the widowed church according to the duty of our office, from the fullness of apostolic power.

But before our letters reached you, relying upon the earlier mandate, you recalled to concord the suffragans who were present in the kingdom, with the exception of the aforesaid Bishop of Pécs. Thus the bishops of Vác, Veszprém, and Győr—for the present, and saving their right for the future, which they were setting aside because of the affliction and necessity of the church of Esztergom—

humbly petitioned us for the translation of the Archbishop of Kalocsa. The aforesaid Bishop of Nitra wrote that, if it did not please us to admit the election made concerning the Bishop of Pécs, he humbly entreated us for the postulation of the other man without prejudice to his right.

After this, when our mandate had been received, those who had agreed upon the Archbishop of Kalocsa did not, as was proposed before us, wish to withdraw from his postulation, but renewed it. Certain of the canons who had declined to the other party returned to them. With the letters of the aforesaid king and the suffragans, they sent our beloved sons A., master of the schools, M. the treasurer, A. the archdeacon, and F. and N., canons of Esztergom, to the Apostolic See to seek the grace of dispensation concerning their postulation.

The others, who had postulated the Bishop of Pécs, assembled together, as was proposed before us on their behalf, and summoned the other canons to the chapter, wishing to proceed within the appointed term to a concordant postulation or canonical election according to the apostolic mandate. But when the others were unwilling to assemble, they understood that the free faculty of electing remained with them alone, because the rest neglected to prosecute their right; and, although an appeal had been made by the others that this not be done, they postulated the aforesaid Bishop of Pécs anew.

When the messengers of each party had therefore reached the Apostolic See, those who had come on behalf of the Bishop of Pécs alleged that their party had proceeded according to the apostolic mandate. They said that the disagreement or contradiction of those who, despising the form of our mandate, had neither canonically elected anyone nor concordantly postulated after receiving it did not obstruct them. Hence their postulation ought to be regarded as concordant, since the others, as despisers of the apostolic command, had deprived themselves of the right of electing and postulating when they were unwilling either to postulate or to elect—indeed, even to assemble in chapter.

To these matters it could be answered on the opposing side that those who had postulated the Archbishop of Kalocsa followed the form given to them by our letters. For, relying upon the earlier postulation, they had, according to the tenor of our earlier letters, made concordant what had previously been discordant when they recalled the suffragans to concord. Nor did the disagreement of those who postulated another obstruct them, since you had all previously agreed together upon the postulation of the aforesaid archbishop, had asked us through common messengers to confirm your consent recorded in letters and strengthened by your own subscriptions, and we had received your postulation to be adjudicated if the suffragans should perhaps persist in opposition, or to be approved if they consented or even yielded.

For if, after a postulation is strengthened by the subscriptions of those postulating and presented to the Roman Pontiff for approval, those postulating could withdraw from it, they would frequently mock us and our judgment would seem to depend upon their will. It could also be added that the other party had not observed the apostolic mandate, since it had celebrated neither a concordant postulation nor a canonical election, when amid greater opposition than before—not only from the canons but also from the suffragans, with the king himself favoring the adverse party—it postulated the aforesaid Bishop of Pécs.

Having therefore heard these and other matters proposed on each side and held diligent deliberation concerning them with our brothers, we understood that, even if neither postulation should be

approved, provision for the church of Esztergom would henceforth pertain to us according to the tenor of the later rescript. But because we did not have full knowledge of the persons of that kingdom, and therefore could not with a safe conscience fittingly provide for that church in another person originating from the kingdom of Hungary, and because we were unwilling to set a foreigner over it, although it seemed more regular and honorable for a suffragan to ascend to his own metropolitan see than for an archbishop to be transferred from one metropolitan see to another, we nevertheless chose the preferable course.

Accordingly, we absolve that archbishop—upon whom all those whose consent is required in the election or postulation of a pastor had agreed, although at different times—from the bond by which he was bound to the church of Kalocsa; we transfer him to the metropolitan church of Esztergom and grant him permission to pass to it, intending to send him the pallium for the title and use of that church. [We therefore admonish, etc. Given at Rome, on the second day before the Nones of October, 1205.]

Chapter V

Latin source headnote: A postulation against which proceedings are brought on the ground of contempt can be rejected without prejudice to anyone; it can nevertheless be admitted by special grace. This it says.

The same to the Chapter of Esztergom.

The postulation which you celebrated [concerning the transfer of our venerable brother I., Archbishop of Kalocsa, to the metropolitan church of Esztergom is wholly opposed by our venerable brothers the suffragans of that metropolitan see, namely C., Bishop of Pécs, B., Bishop of Vác, R., Bishop of Veszprém, and I., Bishop of Nitra. They intimated to us through their letters that, when V., your archbishop of good memory, had entered upon the way of all flesh, without consulting them you held diligent counsel among yourselves, sent certain of your fellow canons into the presence of our dearest son in Christ, the illustrious King of the Hungarians, and expressly named the person whom you wished to be set over you.

After no long delay, when the same bishops had solemnly assembled on the feast of blessed King Stephen to treat with unanimous deliberation concerning the election of the church of Esztergom, you were asked by those bishops whom you wished to have set over and appointed to that see. You answered that you would dare to elect no one unless he possessed the king's full favor, and immediately took care to name the aforesaid Archbishop of Kalocsa, adding that the suffragans had no right in the election of the archbishop. The suffragans answered that, from the first establishment of Christianity in the kingdom of Hungary until those times, no one had been elected to the see of Esztergom unless the suffragans elected together with the canons according to canonical custom and approved custom. They also said that it ought first to be inquired whether a useful and suitable person could be found from the body of that church, asserting that in it there were many honorable, discreet, and learned men who could more fittingly preside over that church.

Through the same letters they further intimated to us that, since the aforesaid Archbishop of Kalocsa had until those times asserted that the church of Kalocsa was equal to the metropolitan church of Esztergom and had inflicted various and intolerable injuries upon it both in word and deed, they feared not a little that, if he were transferred to the aforesaid metropolitan church, mindful of his

own profession and assertion and as though covered with shame lest he seem contrary to himself, he would undertake the advancement of the affairs of the church of Esztergom less effectively. They feared also that he would not cease to oppress those bishops who, according to their duty, had sometimes sternly resisted his words and acts, although according to the canonical sanctions a judge ought not to be given to persons to whom he is suspect.

But our beloved sons, [name omitted], abbot of Bucco, and Master Peter on behalf of the aforesaid king, and also the [name omitted], provost of Pressburg, and the [name omitted], treasurer of your church on your behalf, arguing to the contrary, steadfastly asserted that the things proposed by the bishops were wholly false. They firmly alleged that the bishops had been solemnly summoned by the same provost and others before the common deliberation and had come, and that their assent had many times been sought as a matter of favor. But when they denied you fitting counsel and aid concerning provision for your church, you, wishing to provide for that desolate church, summoned the aforesaid bishops, assembled together, and unanimously directed your votes, in their presence, toward the aforesaid Archbishop of Kalocsa so that you might postulate him from us. You supplicated them to petition us by their letters on behalf of your postulation, which they wholly refused to do.

When the aforesaid messengers asserted that urgent necessity and evident utility required the transfer of that archbishop, it was proposed before us in the same dispute that the said Archbishop of Kalocsa, to the grave prejudice of the church of Esztergom, crowned the son of the aforesaid king as king, although you protested and displayed confirmations of the Apostolic See, since the coronation of the King of Hungary is known to belong not to the church of Kalocsa but to your metropolitan church. Hence he ought to be gravely chastised as an invader of another's right and a despiser of an apostolic statute. It could also be presumed by probable inference that, since he would not bring a complaint against himself and his own deed, he would leave the right of your church in this matter undefended, through which grave prejudice could be generated against it. To the contrary, however, it was replied that the aforesaid coronation had been celebrated by the whole community without contradiction from anyone and without prejudice to anyone.]

Therefore, although through a postulation of this kind no right has been acquired by anyone, and consequently we could reject the aforesaid postulation without prejudice to anyone, nevertheless, so that we may counsel you by special grace insofar as we can with God, we have considered that provision should be made as follows. If the aforesaid pontiffs persist in their opposition and you continue to press for the obtaining of the postulation, since the foregoing matters have not been established before us, you are to present yourselves before us through suitable proctors sufficiently instructed concerning all matters by the next Septuagesima, so that, with each party present, we may decree what is just. [But if they, etc. Given at Rome, at Saint Peter's, on the tenth day before the Kalends of December, 1204.]

Chapter VI

Latin source headnote: A bishop is not to be elected to another dignity, but is to be postulated.

Honorius III to the Chapter of Cagliari.

Although your votes unanimously concurred in electing our venerable brother the Bishop of Sutri as archbishop of your church, since, being bound to his own church, he does not have free flight without our permission, with the counsel of our brothers we have considered that the election made

concerning him should be invalidated as having been attempted less than lawfully against the canons, since by no law could he be elected, but rather ought to have been postulated.

Wishing nevertheless to concur with your desires by benign favor insofar as we can with God, we have considered that it should be enjoined upon our beloved sons the subdeacon and B., our chaplain, legates of the Apostolic See, that they both inquire into your wishes concerning him and diligently examine the merits of the person in our stead, sending him to us with their letters containing the truth, so that, if he is found suitable, with the Lord disposing, both he may be usefully provided for in the church and your church in him.

Title VI: On Election and the Authority of the Elected

Chapter I

Latin source headnote: A collegiate church ought not to be provided with a prelate through collation or provision, but through a canonical election to be made by the college itself. This it says. Abbas.

Pope Lucius.

In a church where two or three brothers are assembled in a congregation, no priest is to be chosen except by their canonical election, after those brothers and the parishioners have been summoned and have come together in agreement. But if anyone has obtained a church otherwise, because he acquired it through cupidity and acted contrary to the discipline of the canonical rule, let him be expelled.

Chapter II

Latin source headnote: A person elected in response to the clamor of the people ought not to be confirmed by the superior.

From the Council of Sardica.

Bishop Hosius said: "If anyone should be so rash that, perhaps bringing forward such an excuse, he asserts that he received letters from the people, although it is manifest that many of those who do not have sincere faith could have been corrupted by reward and payment so that they shouted in the church and appeared to seek him as bishop, I judge that these frauds ought entirely to be condemned. Such a man is not even to receive lay communion at the end of his life unless he has repented of this. If this pleases everyone, decree it." The synod answered: "It pleases us."

Chapter III

Latin source headnote: A canonical election is to be confirmed; nevertheless, before confirmation the superior ought to inquire into the conduct and life of the person elected in the place where he has lived.

Gregory III.

After [the man who had been elected to the episcopate of the city of Sorrento did not appear suitable to us, they elected Amandus, priest of the oratory of Saint Severinus situated in the *castrum Lucullanum*. Therefore we command your experience to take care, every excuse being set aside, to send

that priest to us with all haste, so that] the desires of those seeking confirmation [with Christ's help] may be fulfilled, if there is nothing which impedes the person elected. Since his life and acts can be better known there, where he has lived [for a long time], let inquiry be made there. [And if no, etc.]

Chapter IV

Latin source headnote: The Apostolic See will not deliver the pallium to a person elected as archbishop unless he first takes an oath of fidelity and obedience.

Paschal to the Archbishop of Palermo.

You signified, dearest brother, that the kings and magnates of the kingdom were moved to wonder because the pallium was offered to you by our representatives on this condition: that you should render the oath which they carried, written by us.

In the pallium, brother, the fullness of the pontifical office is granted, because according to the custom of the Apostolic See and of all Europe, before receiving the pallium metropolitans are by no means permitted either to consecrate bishops or to celebrate a synod. In this matter let them marvel also at our Lord Jesus Christ, who, when he committed the care of his sheep to Simon Peter, imposed a condition, saying: "If you love me, Simon Peter, feed my sheep." If the maker of consciences and knower of secrets used this condition—not only once, but a second time also and even to the point of sorrow—with what solicitude and what providence ought we to impose so great a prelacy of the Church and so great a care of Christ's sheep upon brothers whose consciences we do not see, especially those whom we know through no experience and whose love we wholly ignore?

They say that all oath-taking is prohibited by the Lord God in the Gospel, and that after the Lord it cannot be found established either by the [Apostles] themselves or in councils. What, then, does the same Lord mean when he says immediately afterward: "What is more than this is from evil"? For evil, with him permitting, compels us to require this "more." Is it not evil to draw back from the unity of the Church and from obedience to the Apostolic See? And is it not evil to break forth against the statutes of the [sacred] canons? How many have presumed to do this even after an oath was rendered?

Did not your predecessor condemn a bishop without the knowledge of the Roman Pontiff? In what canons, in what councils, is this read to be permitted? What shall I say concerning the translations of bishops which among you are presumed not by apostolic authority but at the royal nod? An oath of this kind is required to avoid these and other evils.

The Apostle James, adding the words "so that you may not fall under judgment," clearly teaches why the Lord prohibited an oath: lest anyone, as Augustine also explains, through the habitual frequency of swearing slide by custom into perjury. Therefore [one] should not use an oath except from necessity, when one sees that men are slow to believe what it is useful for them to believe unless it is confirmed by an oath. Plainly, by this evil and necessity we are compelled to require an oath for faith, obedience, and unity. Moreover, his own epistles testify that the Apostle Paul swore because of the distrust of his hearers.

They say that no such statute is found in councils, as though any councils had prescribed law to the Roman Church, although all councils have both been held and received force through the authority of the Roman Church, and the authority of the Roman Pontiff is manifestly excepted in their statutes.

[Was it not established in the sixteenth action of the Council of Chalcedon that, before all else, the preeminent honor of primacy was to be preserved for the most reverend Archbishop of ancient Rome according to the canons? Accordingly, because the king and magnates have determined that you should be released from the aforesaid condition of the oath, does this appear to you an evangelical judgment? Does it appear to be the preeminent honor of our primacy? Has that saying of the Lord fallen from their minds: "A disciple is not above the master"? Was it said to the Hungarian prince: "And you, when you have turned again, strengthen your brothers"? Do we require these things for the advancement of our own advantage, and do we not establish them as a bulwark of Catholic unity?]

They can despise the Apostolic See; they can lift their heel against us; but they cannot overthrow or take away the privilege given by God, by which it was said to Peter: "You are Peter, and upon this rock I will build my Church, and I will give you the keys of the kingdom of heaven." Nevertheless, by the decrees of the four councils the manner of giving the pallium was prescribed and the order of profession or obedience was sanctioned [as law].

Since, therefore, you seek from the Apostolic See the insignia of your dignity, which are taken only from the body of blessed Peter, it is just that you also render to the Apostolic See the signs of due subjection which declare that you have them with blessed Peter as members from a member and that you preserve the unity of the Catholic head. In these matters such moderation has been employed by our predecessors that nothing injurious and nothing difficult has been imposed which ought not, even apart from our exaction, to be observed by all bishops who have resolved to persist under the obedience and in the unity of the Apostles Peter and Paul.

Do not the Saxons and Danes dwell beyond you? And yet their metropolitans both affirm the same oath, treat the legates of the Apostolic See honorably, assist them in their necessities, and visit the thresholds of the Apostles through their legates not merely every three years but every year. [Thus you, etc.]

Chapter V

Latin source headnote: If a schismatic who has returned to the unity of the Church is elected bishop, the election does not hold, but by dispensation it can be confirmed.

Alexander III to Peter, Cardinal-priest and Legate of the Apostolic See.

Because your diligence carefully inquired of us through our beloved son S. whether you ought to confirm the election of a person elected who recently, after abjuring schism, returned to the unity of the Church and to devotion to us, we have considered that this answer should be given to you: if he received no order from a schismatic and his election was celebrated unanimously and concordantly according to the form of the canons, we permit him, by way of dispensation and provided that no other matters impede him, to be confirmed. We command you to cause him to be ordained bishop by the Catholic bishops who are suffragans of the church of Aquileia, saving nevertheless the justice and reverence due to that church when it has returned to Catholic unity.

Chapter VI

Latin source headnote: A person elected Roman Pontiff by two-thirds of the cardinals is Pope, notwithstanding any exception; but a person elected by the smaller number who conducts himself as

Pope incurs, together with those adhering to him, the penalties contained here.

The same, in the Lateran Council.

Although sufficiently manifest constitutions concerning the avoidance of discord in the election of the Roman Pontiff have issued from our predecessors, nevertheless, because after those constitutions the Church has often suffered grave schism through the audacity of wicked ambition, we too, to avoid this evil, have decreed with the counsel of our brothers and the approval of the sacred council that something should be added.

§1. We therefore establish that, if perhaps, with the enemy man sowing weeds, full concord among the cardinals concerning the appointment of the Supreme Pontiff cannot be achieved, and, while two-thirds agree, the third part should be unwilling to agree or should presume to name another for itself, the man who has been elected and received by the two agreeing thirds shall, without any exception, be held as Roman Pontiff by the universal Church.

§2. But if anyone, relying upon the nomination of the third part—which cannot have a rational basis—should usurp for himself the name of bishop, both he and those who have received him shall be subject to excommunication and punished by deprivation of every sacred order, so that even communion as viaticum shall be denied them except only at the end of life. If they do not come to their senses, let them receive their portion with Dathan and Abiram, whom the earth swallowed alive.

§3. Moreover, if anyone is elected to the apostolic office by fewer than two-thirds, unless greater concord intervenes he shall in no way be assumed; and he shall be subject to the aforesaid penalty if he is unwilling humbly to abstain. Nevertheless, no prejudice shall thereby be generated against the canonical constitutions or against other churches, in which the judgment of the greater and sounder part ought to prevail, because whatever doubtful matter arises in them can be determined by the judgment of a superior. In the Roman Church, however, something special is established because recourse cannot be had to a superior.

Chapter VII

Latin source headnote: Election to the episcopate ought to be made of a person worthy in learning, morals, and age, who has completed his thirtieth year and was born of a legitimate marriage. This it says as far as § "But when." — §1. The benefices of a person elected bishop become vacant through confirmation, acquisition of possession, and subsequent consecration, or after the appointed time for seeking consecration has elapsed. This it says as far as § "The lower." Abbas Siculus. — §2. For dignities and offices below the episcopate and for benefices with cure of souls, the person to be assumed ought to have attained his twenty-fifth year and otherwise be suitable in learning and morals. If he is not in the required order, he ought to cause himself to be promoted at the next ordination times; otherwise, if he does not obey after being admonished, he is deprived of the benefice notwithstanding an appeal, unless he is excused by a lawful cause. This it says as far as § "Clerics." Abbas Siculus. — §3. Those who elect an unworthy person contrary to the form of this chapter are, for the first occasion, deprived of the power of electing; the same applies to a collator. The bishop supplies the defect of the chapter, and conversely. If the chapter is negligent, devolution occurs to the metropolitan. This it says as far as the end.

The same, in the same council.

Since in all sacred orders and ecclesiastical ministries maturity of age, gravity of morals, and knowledge of letters are to be sought, much more ought these things to be sought in a bishop, who, being placed over the care of others, ought to show in himself how others should conduct themselves in the house of God. Therefore, lest what was done concerning certain persons because of the necessity of the time be drawn by posterity into an example, by the present decree we establish that no one shall be elected bishop unless he has already completed the thirtieth year of age, was born of a legitimate marriage, and is also shown to be commendable in life and learning.

§1. But when he has been elected, has received confirmation of the election, and has had administration of the ecclesiastical goods, after the time defined by the canons for the consecration of bishops has elapsed, the person to whom the benefices which he held pertain shall have free power to dispose of them.

§2. Let no one at all receive lower ministries—such as a deanery, an archdeaconry, and others which have the care of souls annexed—nor the governance of a parish church, unless he has already attained the twenty-fifth year of age and is commendable in learning and morals. When, however, he has been assumed, if an archdeacon has not been ordained to the diaconate, and a dean and the others, after being admonished, have not been ordained to the priesthood within the time appointed by the canons, let them be removed from that office and let it be conferred upon others who are both willing and able to fulfill it fittingly. Nor let the refuge of appeal profit them if perhaps they wish to protect themselves through an appeal in transgression of this constitution. We command that this be observed not only concerning persons to be promoted but also concerning those who have already been promoted, if the canons do not obstruct it.

§3. Clerics, indeed, if they elect anyone contrary to this form, should know themselves [to be] deprived on that occasion of the power of electing and suspended from ecclesiastical benefices for three years. For it is fitting that those whom fear of God does not recall from evil should at least be restrained by the severity of ecclesiastical discipline. But if a bishop acts or consents to action contrary to these provisions, he shall lose [his] power in conferring the aforesaid offices and benefices, and appointment shall be made through the chapter, or through the metropolitan if the chapter cannot agree.

Chapter VIII

Latin source headnote: Those who commit an election to another are bound to receive the person elected by the compromissary if she is suitable.

The same to the Archbishop of Ravenna.

Some time ago we committed to your experience for termination the cause which is known to be conducted among the nuns of Saint Margaret concerning the discord and dissension of the election which they made. But because that cause is prolonged to such an extent, and, as we have learned, you have not yet proceeded, and because it is dangerous and damaging to the monastery that the cause is prolonged so greatly, we command your fraternity by apostolic writings to proceed in that cause within forty days, or two months at most, according to the tenor of our other letters.

You are to proceed in such a way that, if the sisters committed the election to the bishop, promising that they would receive the woman whom the bishop provided for them, you cause the woman whom the bishop has provided to be received by them as their abbess, appeal being removed, provided nevertheless that she is suitable. But if you are unable to proceed in the cause, you are to signify on our behalf to our beloved sons I., cardinal-priest of the Basilica of the Twelve Apostles and Legate of the Apostolic See, and the Prior of Saint Victor that they are to proceed in the same cause and decide it with a due conclusion.

Chapter IX

Latin source headnote: Before confirmation, a person elected cannot confer benefices or otherwise administer.

The same to the Bishop of Worcester.

You know, as a prudent and wise man, that our beloved son G., Bishop-elect of Lincoln, does not have the faculty of granting honors or prebends, or of otherwise disposing of the property of the church, since his election has not been confirmed.

For this reason we command your fraternity by apostolic writings, by way of precept, not to delay more strictly prohibiting the aforesaid elect on our behalf from presuming to confer upon anyone the archdeaconry of Norantine or the prebend which W., archdeacon of that place, held. And if—which we do not suppose—he has granted that archdeaconry or prebend to anyone, we therefore command you to order him by our authority to take care, as quickly as possible and with every contradiction and appeal ceasing, to revoke any grant which he made concerning the aforesaid matters. [But if he delays, etc.]

Chapter X

Latin source headnote: An election made after an appeal, while the first election had not been quashed, and contrary to the privileges of the church, is to be quashed.

The same.

We considered that the election of John Frontinus had been celebrated after an appeal to us had been interposed and contrary to the tenor of the privileges of your church. We also perceived that the election of B. was made after that election of whatever quality had not been quashed, and also after an appeal through which all things ought to be restored to their former state, and after violence had been inflicted, although the king wholly denies that any violence was ever perpetrated in this matter with his assent or knowledge.

Therefore, with the common counsel of our brothers, we wholly quash each election and grant you free power to agree upon another suitable and honorable person. This is nevertheless to be done so that the reputation of each of the aforesaid men is preserved no less entirely on account of this, and so that they may, if God grants it, be promoted to dignity in other churches. Apart from this disposition for your church, however, it shall be lawful for you, if it is your will, to agree again upon either of them and to provide him canonically as your abbot and master.

Chapter XI

Latin source headnote: A confirmed metropolitan, although he has not yet received the pallium, can cause his suffragan to be consecrated.

The same.

It is lawful for the suffragans of a metropolitan, at the mandate of that metropolitan after confirmation of his election, to consecrate a person elected who belongs to his jurisdiction, even if the metropolitan has not received the pallium. When the metropolitan is suffering from illness or otherwise impeded, after his reception of the pallium—and even before it, if his election has been confirmed—his suffragans can, at his mandate, confer the office of consecration upon the person elected.

Chapter XII

Latin source headnote: A person whose election was quashed not because of a defect in the person but because of the manner of election can be elected again; it is otherwise if it was quashed because of a defect in the person.

Clement III.

Concerning what you wished to inquire—if, after someone's election has been quashed, the same person is elected to the governance of another church, whether his election ought to be confirmed—we wish your discretion to hold this: if the earlier election is quashed not because of a defect in the person but because of the manner of election, it ought not to impede his promotion even in the same church, unless perhaps it is established that some depravity of simony intervened.

Chapter XIII

Latin source headnote: A person who has not made profession can be postulated as abbot if a postulation of this kind is made for some good cause. This it says according to the reading which is more particular.

Celestine III.

Since the monastery of Pellicia situated in your episcopate has come to such dissolution, as the intimation of your letters disclosed, that the brothers of that house have cast off the observance and order of religion and, after its goods were squandered and consumed, have hitherto been unable to agree upon electing an abbot for themselves from the body of that church, nevertheless, at the insistence of your admonition and exhortation, they assembled together and unanimously agreed upon a man of good testimony who had lived laudably with his brothers in a hermitage. Postulating him as abbot with all their desires, they asked to be subjected to his disciplines and habit.

You, with the counsel of prudent and discreet men, assented to their postulation and humbly petitioned that the same appointment be confirmed by the Apostolic See. We, liberally imparting our favor and assent to your petition, confirm that appointment as having been canonically made and fortify it with the protection of the present writing. [Concerning that matter, etc. (compare chapter 1, *On Confessions,* II.18.)]

Chapter XIV

Latin source headnote: An election ought to remain within the freedom of those electing, and a contrary custom is not valid.

The same.

Since the land which was regarded as the measuring-line of the Lord's inheritance ... (*And below:*) As we have learned from the tenor of certain letters and the report of many persons, a disease of depraved custom formerly crept into elections: namely, when the election of some prelate is to be celebrated, the convent to which it is known to belong names two persons, who are secretly to be declared in the ears of the patriarch or prince, so that the same patriarch or prince may thus have full power either to choose one of them or wholly to invalidate the entire election.

Since this redounds to the burden and destruction of ecclesiastical liberty, we decree that the aforesaid depravity of custom is to be wholly abolished. We establish that the form of canonical election be observed in all conventual churches: namely, when provision is to be made for a church deprived of the governance of a pastor, the electors are to assemble in one place where the election is to be celebrated and, after the grace of the Holy Spirit has been invoked, solemnly name a person upon whom all, or the [greater] part of sounder counsel, can agree. Without contradiction from anyone, that person is to be admitted to the governance of that church, provided that the person is suitable and the election was celebrated without simoniacal depravity.

But if there was fault in the person or in the manner of election, the electors are to apply diligence of inquiry in the election until they can provide a suitable person for the vacant church according to the aforesaid form. When this has been done, we do not prohibit the assent of the king or of the patriarch then in office from being sought; but we do not wish the election itself to be impeded on this account.

Chapter XV

Latin source headnote: Through confirmation of an election the power to exercise those things which belong to order is not transferred, for those things are transferred through consecration. Abbas.

The same.

Your affection has now repeated the question which, as you took care to intimate, was previously transmitted to our hearing. You asked what is to be done by you concerning the fact that clerics of your diocese, when they are struck for their excesses by a sentence of suspension, interdict, or excommunication, make light of it, abandon their churches, and transfer themselves to the commercial occupations of laymen. Certain of them also set aside the clerical habit, put on lay garments, and, involving themselves like lay merchants in base gains, join the company of laymen like themselves and elude ecclesiastical correction through contempt. They say that you do not have the power to correct them unless the Apostolic See has specially granted it to you.

We therefore answer that, whenever you find such persons, if after being admonished they are unwilling to be recalled from such base acts, to make full satisfaction for their contempt, and to return to clerical dress, you, supported by our authority, are to subject them to excommunication

with appeal ceasing and cause them to be more strictly avoided by everyone until they have purged their guilt by suitable satisfaction, especially if any of them have been established in sacred orders.

You could execute these things even without a special mandate, since from the time when you received confirmation of your election you have free power to establish what is just and accords with ecclesiastical utility concerning such and similar matters, apart from those things which require examination through a greater inquiry and demand the ministry of consecration.

Chapter XVI

Latin source headnote: One who renounces an election made concerning himself cannot appeal in order to impede the election of another. And an election celebrated by suspended persons does not hold.

Innocent III to the Abbots of Cella Sancti Petri and Modena.

When a dispute concerning the abbey of Schaffhausen arose between our beloved son R. the elder and R. the younger, and they appeared in our presence, we appointed as their auditors our beloved sons G., cardinal-deacon of Saints Cosmas and Damian, and G., cardinal-deacon of Santa Maria in Aquiro. In their presence [on behalf of R. the elder] there were proposed [the matters which follow.

When H., former abbot of that monastery, had spontaneously resigned the burden of governance against the will of his chapter and had absolved the monks from obedience to him, they unanimously elected the aforesaid R. the elder as their abbot, with the said H. also consenting and obeying him together with the others. Afterward the elect was presented to the diocesan bishop and received from him the office of blessing, administering that church as its proper abbot for two years and more.

But because he placed the nuns of Saint Agnes of that town—who were furnishing the younger monks with material for sin—under stricter custody, the young monks, seizing an occasion from this, stirred up others against him on the ground that the aforesaid resignation of H. had been less than canonical. Hearing this, the aforesaid bishop approached the place and inquired into the cause of the dissension. He paternally rebuked H. as though he had sown an occasion of hatred in the church, but learned from him that such things were not being done through him. When certain of the monks said in the bishop's presence that they had by no means been absolved from obedience to H., H. declared that he had absolved them. To remove every ground of suspicion from himself, he vehemently asserted with an oath before the bishop that he wished henceforth to have neither that abbey nor any other.

After the bishop's departure, however, the monks returned nevertheless to their customary devices and conducted a controversy against R. before the said bishop and the chapter of Constance on the ground that H. had relinquished the abbey less than canonically. When R. was prepared immediately to prove the justice of his position, the monks, seeing the defect in their cause, appealed to the Apostolic See although aggrieved in nothing. Through letters obtained by subreption within the period of appeal, an unjust judgment was promulgated against R. by messengers while he was appealing, and his adversary was restored.

R., prosecuting the appeal interposed through a messenger, obtained letters of commission within the appointed term to specified judges. Those letters commanded that, after what had been adjudged against him on occasion of the earlier commission had been restored to its due state, they should

restore the abbey to him and cause the monks to show him due reverence. But the monks remained obstinate and were unwilling to obey him.]

Both parties approached the Apostolic See. Pope Celestine of good memory, our predecessor, appointed as their auditors ourselves—when we were then established in a lesser office—and our beloved son John, cardinal-priest of the title of Saint Stephen. When argument had been made at length on each side before us and we had explained the course of the affair to our aforesaid predecessor, Celestine of good memory, our predecessor, compelled R. the elder, who urgently demanded a judgment, to enter a settlement against his will. Thus, renouncing the abbey, he received from H.'s hand the custodianship and also the priory, to be possessed without any dispute while H. lived.

Although R. consented to this arrangement unwillingly, when he returned home he was unable to obtain the things [granted to him], because his adversaries were unwilling to observe the settlement. Rather, what is worse, they afterward laid violent hands upon him. But, aided by the men of that place and escaping the hands of the monks, he flew to the aid of an appeal.

Meanwhile our beloved son P., cardinal-deacon of Santa Maria in Via Lata and Legate of the Apostolic See, approaching those regions, both suspended the monks and placed the monastery under interdict because of the aforesaid and many other excesses. But they, despising the cardinal's sentence, celebrated the divine offices more promptly than before; and while this suspension remained, the aforesaid adversary of R. was taken from their midst by death.

On learning this, R. came to the church and, when he wished to comply with the aforesaid settlement but the other party was unwilling, placed before them the obstacle of an appeal so that they should not proceed to the election of an abbot until the dispute between them was terminated. But the monks, contumacious in every respect, together elected the said R. the younger and presented him to the diocesan bishop to be blessed. The bishop blessed him after the appeal had been interposed and in a church under interdict.

[For this reason R. the elder, again approaching the Apostolic See, obtained letters from us directing that what had been improperly attempted by the monks after an appeal had been lawfully interposed should be restored to its due state. If it were established that the election had been made by persons suspended and under interdict, the judges were to declare that it did not hold at all; concerning the restoration of R. the elder and the other matters which they considered should be proposed on each side, they were, with appeal removed, to establish what the order of reason required.

When the delegated judges received those letters, they cited the parties into their presence. When the monks wished to prove that the letters had been obtained through suggestion of falsehood, and the judges were unwilling to receive their proof, they appealed to the Apostolic See. But the delegates, because appeal had been removed in the letters, nevertheless proceeded in the cause. When the truth of the affair was established before them through the depositions of witnesses, they rendered judgment for the often-mentioned R. the elder and adjudged the aforesaid church to him. He therefore petitioned that what had been done by delegation of the Apostolic See obtain due firmness through us, so that, after the contumacy of the monks had been repressed, he might enjoy peaceful possession of the abbey.

On the other side, however, it was alleged against R. the elder that, when the former abbot H. had resigned less than lawfully and the monks were treating concerning an election, R. the elder employed fraud and procured that, while vespers were being sung and the election was to be celebrated on the following day, the men of the town approached the church and violently intruded R. there while almost all the monks protested. Afterward, recognizing that the resignation of H. had by no means held and considering also that the monastery could prosper under his praiseworthy conduct, the monks sought him as their proper abbot.

Hence it happened that, after many altercations and commissions, a commission was at length obtained with the assent of each party: if it were established before the delegated judges that the resignation of H. was formless and the substitution of R. the elder useless, they were to remove R. and restore the abbey to H. This was carried into effect.

Afterward, while R. nevertheless murmured, both men together approached the presence of our predecessor, who, as we have already stated, appointed us and the aforesaid cardinal-priest as their auditors. When the cause had at length been conducted for a long time, a settlement was celebrated by our predecessor with the assent of each party: H. was to obtain the abbey, and R. the priory and custodianship, on account of which R. promised obedience to H. When they thus returned home, R. approved the aforesaid settlement before the diocesan bishop. But when afterward he was asked a third time by the abbot whether he wished to have the custodianship and priory, he came after a third citation and said that he wished to have the aforesaid offices not through the abbot but through the Roman Pontiff; and therefore he was unwilling to show the abbot any obedience.

Departing without the abbot's permission, he remained outside the monastery for a considerable time and was bound by H., with the counsel of the brothers, by the bond of excommunication. When he did not return to the monastery for a long time, the abbot, with the brothers advising, assigned those offices to others, who held them peacefully as long as the abbot lived.

When the abbot died, the brothers assembled together in the presence of certain abbots and other religious men who had gathered for the burial of the deceased, and, in the absence of R. the elder, unanimously elected R. the younger as abbot. The diocesan bishop confirmed and blessed him after he had been presented.

Thereafter R. the elder approached our presence and, by falsehood, obtained letters to judges four days' journeys distant and suspected by the monks. A party of the monks approached those judges before any citation and, after obtaining a copy of the commission, alleged that the letters had been obtained through suggestion of falsehood: they said that it was written in the letters that the settlement had not been observed for him, that the monastery was under interdict, and that he had appealed before R. the younger was elected abbot, all of which they asserted to be wholly false. He also concealed that he had been excommunicated by the deceased abbot and certain other matters which, if expressed, would by no means have allowed him to obtain those letters.

When they wished sufficiently to prove everything which we have stated, and the judges refused to receive their proofs on the ground that this had not been committed to them, the monks appealed before entry into the trial, as was proved from the depositions of witnesses. The delegates nevertheless proceeded, received the witnesses of the opposing party, and by judgment decreed that R. the elder was to be installed. The monks humbly petitioned us to invalidate their act as unjust.]

When the aforesaid cardinals had prudently and faithfully reported these and certain other matters to us and our brothers, we, considering that by assent to the settlement received—which our predecessor had also confirmed—R. the elder had lost whatever right had belonged to him, and that on this account he could by no means lawfully have appealed to prevent the monks from proceeding to an election, since those whose interest is not involved are not ordinarily heard when they appeal, declare with the counsel of our brothers that the appeal was not lawful. Hence the election could not be impeded by it.

[But because it was established before us that the monks reasonably appealed before the beginning of the litigation on the ground that the delegates were unwilling to admit proof concerning the suggestion of falsehood, and consequently that, by the very fact that a proper appeal had been made, the jurisdiction of the judges had expired, we declare by judgment that whatever was improperly attempted by them—whether in receiving witnesses before joinder of issue or in rendering judgment —does not hold.]

Although our beloved sons P. the provost and the chapter of Constance inserted in their letters the interdict which the cardinal had imposed, nevertheless, because the fact that the diocesan bishop conferred the office of blessing upon R. the younger seems to conflict with what we have stated—so that either the writing prejudices the deed or the deed the writing—and because, although it was alleged, it was not proved that the election had been celebrated by persons under interdict, we could not invalidate it, especially since nothing was attempted against the person elected.

We have therefore considered that the cause should be committed to you with the assent of the parties under this form: if it is established that the election was made by suspended persons, after it has been wholly quashed and suitable satisfaction has been made, let the sentences of suspension and interdict be relaxed, and let provision be made for the monastery in a suitable person. Otherwise, lest the utility of the monastery be delayed, we wish the aforesaid election to be confirmed by you with appeal removed and R. the younger to enjoy peaceful possession of the abbey, [but the other, etc. Given at the Lateran, on the seventh day before the Ides of April, 1199.]

Chapter XVII

Latin source headnote: If the person elected does not have sufficient learning, or if he administers before confirmation, his election ought to be quashed.

The same to the Chapter of Penne.

You, as the authors of his election, know more fully how, after the death of the Bishop of Penne of good memory, when your church was vacant, and after first receiving our letters concerning the election to be made, you elected your primicerius as your pastor. But because the man elected by you irreverently involved himself in administration of the episcopate before obtaining confirmation, receiving oaths from both clerics and laymen, and did not consider that, according to the Apostle, no one ought to assume the honor for himself except one who is called by God as Aaron was—especially since he had not obtained the gift of learning fitting for a pontiff, although according to the word of the Lord, "He who shall do and teach shall be called great in the kingdom of heaven"—after you presented that elect to us, and after sufficient examination had first been conducted and the counsel of our brothers shared, we considered that the election made concerning him should be invalidated as justice required. We declare that whatever was done from it and on its account does not hold at all.

[But lest the flock, etc. Given at the Lateran, on the eleventh day before the Kalends of October, 1199.]

Chapter XVIII

Latin source headnote: If persons who need not be summoned to an election are summoned, an election made without waiting for them is valid. This it says according to the common reading.

The same to the Chapter of Capua.

Since among all metropolitan churches Capua is nearer to the Apostolic See, we aspire more particularly to make provision for it, desiring that such a person be set over it as excels other metropolitans in the affection of devotion just as he does in proximity of place, through whom the metropolitan church itself may receive the desired increase in spiritual as well as temporal matters.

We learned through our beloved sons I. and F., your canons, and through the letters which they brought to the Apostolic See, that the dean and your other canons remaining at Palermo intimated to you by letters that, considering the losses of the church of Capua, you should treat concerning the election of a replacement pastor in such a way that you would name no one in their absence. You sent one of your associates to them with letters, assigning a period of twelve days within which, after receiving your letters, they should begin the return journey. Yet ecclesiastical custom does not require that canons so far away be summoned to the election of a pastor, especially those who knew in person of the death of your metropolitan long before you did, some of whom returned to the church of Capua after his death.

Because a longer delay in elections is highly suspect and indeed often damaging, we command and instruct your discretion by apostolic writings, after invoking the grace of the Holy Spirit, concordantly to assume through canonical election a suitable person for the governance of the church of Capua. You are thereafter to send suitable messengers to our hearing, through whom you are to seek assent from us in place of the king and request the grace of apostolic confirmation. You are to provide attentively that you proceed with such zeal of discretion and charity that neither vice in the election nor defect in the person elected can be found. Otherwise, we would both revoke the act of election as void and punish the persons of those electing.

Chapter XIX

Latin source headnote: It ought to be considered not whether an election was celebrated after an appeal, but whether it was celebrated contrary to the appeal. And the right of electing remains with those who summon and possess the power of summoning if those summoned disdain to come. It also belongs to the office of the confirmer to examine the person elected, even when no one objects. Unless the person elected is shown to be of lawful age and learning, he is held not to have been lawfully elected.

The same to the Archdeacon and Chapter of Capua.

When formerly the death [of the Archbishop of Capua of good memory had been established before us through both your letters and your messengers, wishing, as the solicitude of our office requires, that a pastor be provided more quickly for the widowed church, we commanded you to make a

canonical election of a suitable person through whom the church of Capua could be fittingly governed in spiritual and temporal matters.

You received our mandate humbly and devoutly and assembled in the metropolitan church on the appointed day. When you were sitting in chapter to treat concerning the election to be made, and you, son archdeacon, had begun the hymn invoking the grace of the Holy Spirit, our beloved son M., Archdeacon of Teano and canon of Capua, commanded silence and said: "The Lord Pope has commanded us to make a canonical election, and I prohibit an election from being made unless it is canonical, and I issue the voice of appeal to him." When the aforesaid archdeacon was asked by certain of you what he understood by a canonical election, he answered that, according to the canonical decrees, no one should be elected bishop from another church while a suitable person could be found in one's own.

After a small tumult had thus arisen, when you, son archdeacon, began the hymn again, the Archdeacon of Teano left the choir with certain of his accomplices and began to remain in a corner of the church, while you solemnly completed the hymn in the choir. When, after the grace of the Holy Spirit had been invoked, the election was to be treated, you chose one priest, one deacon, and another acolyte acting in place of a subdeacon—who was also chancellor of the church of Capua—to inquire successively into the votes of individuals. Diligently inquiring into the wishes of everyone, they found all of you who remained in chapter to elect concordant in the election and unanimously naming our beloved son R., our subdeacon and chaplain, son of our beloved son the nobleman P., Count of Celano.

Thereafter you took care through certain of your number to admonish the aforesaid archdeacon and those who had departed with him to come and make the election. But when they wholly refused to come, and the archdeacon said that you had not shown him so much honor and favor that he wished to remain with you in making the election, you published your election, sang *Te Deum laudamus*, and caused the bells to be rung solemnly so that what had been done by you might become known to the city.

When all the people came to the church at the sound of the bells and heard how the election had been celebrated by you, they commonly approved your act. Certain of them repeatedly pressed the archdeacon and the others who disagreed with the election to return to concord. But, as is alleged, the archdeacon answered that he would by no means consent to the election then, but wished to grant it his assent in our presence; and, as is said, he repeated this again and again in the presence of many persons.

You, son archdeacon, approached our presence with many of the canons of Capua, carrying the decree of election strengthened by the subscriptions of those electing. When you had remained with us for some time, three canons of Capua appeared before us some days later on behalf of the opposing party. When both you and they appeared in our presence and that of our brothers, we instructed each party to tell the truth. So far as the narration of fact extended up to the departure of the aforesaid archdeacon from the choir, neither party disagreed.

The aforesaid clerics nevertheless said that many who had departed with the archdeacon had been induced by threats and terrors to consent to the election afterward made by you. When we diligently asked both you and those clerics how many clerics of Capua ought to have participated in the

election, you were not found to disagree in your answer, but both you and they designated a certain number concerning this. When we carefully asked how many had departed with the Archdeacon of Teano when he lodged the appeal, favoring the appeal interposed, the aforesaid three clerics disagreed with you on this point: they alleged that twelve or thirteen canons at most dissented from the election made, while you said there were only five or six. Nevertheless, according to the number of canons expressly given by both you and them, three parts and more were concordant in the election, even if the assertion of the aforesaid clerics—that thirteen canons dissented—were true.

Although, as we have said, we diligently inquired publicly into the truth, nevertheless, lest we appear to omit anything concerning which fuller proof should be furnished to us, we commanded certain of our brothers to examine you and those clerics individually, so that each of you might set forth the truth more fully and securely before them. They found nothing other than what had previously been proposed.

When the aforesaid clerics, who had said that certain canons were induced by threats and terrors to consent, were asked whether they had seen any coercion inflicted upon anyone, they answered that after the election had been made they heard certain canons threatening others and saying: "Let three hundred armed men be summoned from the city, and then it will appear who is unwilling to consent to our election." But although this was said, they did not see anyone coming with arms on this account or inflicting any coercion upon them.]

Since it was established from the assertion of each party that a canonical appeal had been interposed when appeal was made to our hearing, according to the tenor of our mandate, that no election should be held unless it were canonical, it could appear that nothing ought to have been altered in the interval after the appeal. Hence an election of this kind was to be adjudged invalid and void as having been attempted after a canonical appeal had been interposed.

To the contrary, however, since the appeal had been made not that no election should be held but that a canonical election should be held, if the act of election followed canonically, it appeared to have proceeded not contrary to the form of the appeal but rather according to it. Therefore, although the election was celebrated after the appeal, it was not celebrated against it, and for this reason it was in no way to be invalidated.

For although it is established in a canon that a person should then be elected from another church when no suitable person has been found in one's own, nevertheless, since two-thirds and more consented and continue to consent to the election, and since this rule was introduced in favor of the clerics and anyone may renounce a right known to have been introduced on his behalf, you, who were two-thirds and more—since what two-thirds of a chapter do is regarded as done by the whole—could in this matter renounce the right which appeared to operate in your favor and celebrate the election of a person from another church.

This is especially so because that decree appears to have application when an outsider is imposed by the violence of some power against clerics who resist and are unwilling. For this reason it follows in the decree that clerics shall have the faculty to resist if they see themselves burdened, and shall not fear to reject those whom they see imposed upon them from outside.

Moreover, since the Apostolic See is the head of all churches and the Roman Pontiff is the ordinary judge of every individual, when someone from it is assumed as prelate of another church, it does not

appear that it can be objected against him, because of the privilege of the head which possesses the fullness of power, that he was elected from another church, since the members ought not to be regarded as foreign to the head.

Likewise, after the appeal had been issued—not that no election should occur, because such an appeal would be null, but that a canonical election should occur—the Archdeacon of Teano departed from the choir with his supporters. You took care solicitously to recall them so that they would participate with you in the election to be made. Because they were unwilling to approach to make the election, they appear to have made themselves strangers to it, for which reason they seemed unable by law to contradict the election concordantly celebrated by you according to the form of the apostolic mandate, especially since the same archdeacon, when afterward questioned, answered that he wished to give it his assent in our presence.

Therefore, since according to the statutes of the Lateran Council, with appeal removed, that which has been ordained by the greater and sounder number ought always to prevail unless perhaps something reasonable has been objected and shown by the fewer and inferior, the election celebrated by you as the greater and sounder part ought and could reasonably be confirmed notwithstanding the contradiction or appeal of the few, since what was objected and shown appears from the foregoing reasons not to have been reasonable.

After these and other matters had been alleged, although nothing was ever said or objected against the person whom you elected, nevertheless, according to the word of the Apostle, "Lay hands hastily on no one," we ought diligently to attend to those matters which were to be investigated concerning the person. We therefore considered that we should proceed from our office, as was fitting.

Indeed, since three matters are especially to be investigated in the person elected—namely, lawful age, honorable morals, and sufficient learning—we can bear praiseworthy testimony concerning his honorable morals, since he lived laudably with us for some time. The person elected is also of learning which, although not eminent, is nevertheless suitable, so that, as we learned more fully from those who knew him better, he ought not to be excluded from election because of a defect of knowledge. But we could not learn the full truth concerning lawful age, about which, as we have learned, you also thought nothing. For although we took care to inquire from many persons how old he was, we never heard from anyone that he had attained the thirtieth year of age.

According to the statutes of the aforesaid council, no one ought to be elected bishop who has not completed his thirtieth year. Although venerable old age is not prolonged nor measured by the number of years, but a man's understanding is his gray hair and an immaculate life is the age of old age, nevertheless, after those three things which Solomon asserts are difficult, he reckons a fourth as almost impossible—namely, the way of a man in his youth—as though it cannot be investigated.

Wishing therefore to provide equally for the church and the person, and to observe both reason and the canons, after diligent deliberation concerning this with our brothers, because we understood your purpose to be provident, and therefore because of the urgent necessity and evident utility of the church of Capua—which we approve rather in this matter—we wish that purpose to endure firmly. With the common assent of our brothers, we grant you our aforesaid subdeacon as procurator, committing to him free administration in temporal as well as spiritual matters. [Therefore, etc. Given at the Lateran, 1220.]

Chapter XX

Latin source headnote: A person of illegitimate birth can be postulated but cannot be elected; and the electors incur the penalties of the Lateran Council unless they prove that they elected him in ignorance.

The same to the Archbishop of Canterbury.

It formerly became known to us through your letters, those of certain of your suffragans, and those of our beloved sons the prior and convent of the church of Worcester that, when the church of Worcester was deprived of a pastor, the said prior and convent unanimously elected as bishop our beloved son Master M., Archdeacon of York. When his election was presented to you, you deferred confirmation until the arrival of the man himself, who had been elected while absent and unaware.

At length, when he heard what had been done, he devoutly approached your presence and, contrary to the expectation of everyone—who believed that nothing obstructed the immediate confirmation of the concordant and canonical election—showed you by spontaneous and secret confession that his conscience was somewhat wounded by his birth. He declared that he was unwilling in any way to be promoted to the summit of so great a dignity apart from the indulgence of the Apostolic See, even if he found the person promoting him benign and accommodating.

You, as a provident and discreet man, having understood his conscience, were unwilling to proceed immediately to confirmation. Instead, intimating the sequence of events to us through your letters, through them you commended the merits and conscience of the same master. The chapter of that church explained through its letters sent to us that it did not know why confirmation of the election had been delayed by you, and petitioned that his election be confirmed by the Apostolic See, presenting to us the decree of election strengthened by the subscriptions of those electing.

Certain of your suffragans, however, asserted more explicitly in their letters what you appeared to intimate somewhat obscurely in yours: that he was the son of a certain knight and was begotten by him of a certain freeborn and unmarried woman. Meanwhile, that master unexpectedly approached our presence and explained what had been intimated to us concerning his birth through the letters of certain of your suffragans. He added that his father had never had a wife, but had snatched away, as if furtively, the flower of his mother's virginity, and that she did not contract marriage within four years after his birth.

We therefore, after diligent deliberation concerning this with our brothers and rereading the canons, found certain canons which forbid those not lawfully begotten to be promoted to the pastoral office, perhaps deriving their rationale from the divine law through which the spurious and *mamzeres* are prohibited from entering the church of God down to the tenth generation. We also found others which do not prohibit persons of whatever birth from being promoted to sacred orders, provided that their merits support them, asserting that the fault of parents is not to be imputed to the children.

To prove this they adduce that our Lord Jesus Christ wished to be born not only from foreigners but also from adulterous unions, he who is a priest forever according to the order of Melchizedek. They also appear to rely upon divine scripture, in which it is said: "The son shall not bear the iniquity of the father, and the father shall not bear the iniquity of the son." Through this the ancient proverb which was customarily spoken among the children of Israel appears to be removed: "The fathers ate a sour grape, and the teeth of the children are set on edge."

Certain persons, however, recalling discordant texts to concord, appeared in some manner to quiet the conflict of the aforesaid canons. They said that persons born illegitimately, if they have lived religiously either in monasteries or among canons, are by no means to be removed from sacred ministries. Among persons born illegitimately, certain writers assert that only those who imitate their father's incontinence are to be prohibited from sacred offices. They too appear to rely upon the authority of divine law, in which it is said: "I am a jealous God, visiting the sins of the fathers upon the children to the third and fourth generation among those who hate me [without cause]," as though he said, "among those who imitate their father's hatred toward me."

But a canon of the Lateran Council issued in a general synod by Pope Alexander of good memory, our predecessor, agreeing with the first canons, not only forbids such persons to be promoted as bishops, but also imposes a penalty upon those electing such a person—indeed, it asserts that they incur the same penalty by the fact itself, so that in this respect it appears to be a canon imposing a *latae sententiae* penalty. Its tenor is as follows: "Lest, namely, what was done concerning certain persons because of the necessities of the time be drawn by posterity into an example, let no one be elected bishop unless he was born of a legitimate marriage"; and near the end it adds: "Clerics, indeed, if they elect anyone contrary to this form, should know themselves then deprived of the power of electing and suspended from ecclesiastical benefices for three years."

The aforesaid canon was issued not by one who did not know the ancient canons, but [by] one who fully knew the canonical sanctions; it was issued in a council of many jurists and strengthened by the approval of that council itself. It appears to have closed every approach to promotion as bishops to those born outside lawful marriage, since it also prohibits from being drawn into a precedent what it intimates had been done in earlier times because of necessity, although nothing more than necessity may induce one dispensing to grant a dispensation.

Moreover, it intimates that the election of such persons is null, since it establishes as a penalty of the electors that they should know themselves then deprived of the power of electing. This would mean nothing if an election did not then have to be held; but that could not occur while the earlier election or even nomination continued in force. From this it is evident that an election of this kind is invalidated by the canon itself.

Although the canon of the Lateran Council issued by Alexander our predecessor so pursues those born illegitimately that it intimates their election is null, nevertheless our faculty of dispensing was not taken away through it. For this was not the intention of the one prohibiting, who could generate no prejudice in this matter against his successors, who after him would exercise an equal—indeed the same—power, since an equal has no authority over an equal. Rather, his intention was only that, because certain persons extended grace into license from the fact that something had once been done by dispensation because of the necessity of the time, took an example from it, believed that they could lawfully elect such persons, and elected such persons indiscriminately, [although] he prohibited such things from being done. Hence he inflicted a grave penalty upon the electors.

We nevertheless deliberated with our brothers whether, in such a case and with such a person, we ought mercifully to dispense or rather preserve the rigor of the law. For we found that Pope Urban of good memory, our predecessor, dispensed in a much more difficult case with the Bishop-elect of Le Mans, who was the son of a priest, and with the Bishop of León, who after his consecration humbly and spontaneously confessed that he had been born of an illegitimate mother whom his father had

known while his own wife was living. But Urban prohibited this from being drawn thereafter into a precedent as though it were a rule.

It appeared that, since dispensation had for some time been granted to persons born illegitimately and perhaps would be granted in the future for a definite cause, in this cause dispensation ought the more readily to be granted to the person who had less imperfection and more perfection. Many things appeared to induce dispensation in this case: knowledge of letters, honorable morals, virtue of life, and the reputation of the person, all approved in many ways by certain even of our brothers who had known him in the schools.

Also contributing not a little to this were the concordant election of the chapter of Worcester, the petition of the people, the assent of the prince, your wish, the supporting votes of the suffragans, and the humble devotion of the one confessing, who spontaneously and humbly preferred to confess his guilt rather than ascend the pastoral throne with a wounded conscience.

After diligent deliberation concerning this with our brothers, however, we understood that the chapter of Worcester had not humbly postulated the same master but rather improvidently elected him, although, in order to obtain the benefit of dispensation, it should have proceeded not through a prohibited election but through a permitted postulation. We therefore declare the election quashed by authority of the aforesaid canon to be invalid and void. We spare the chapter of Worcester not a little, since we neither inflict upon them the penalty expressed in the aforesaid canon nor compel them to prove the ignorance which they allege.

Although after a quashing of this kind many persons humbly petitioned us that, for the aforesaid reasons, we deign mercifully to dispense with him—since no case more apt for dispensing in such matters could present itself—nevertheless, because we wish to reserve to the aforesaid chapter the free faculty of electing or postulating, we have not considered that a petition of this kind should be admitted at present. It was not made in the name of the chapter, since the chapter's messengers were sent not to postulate a dispensation but to seek confirmation. We decree invalid and void whatever shall have been attempted concerning the ordering of that episcopate before receipt of our letters.

We therefore will and command that you cause it to be more strictly prohibited on our behalf throughout the province of Canterbury that what is known to have been done irregularly concerning many persons in that province—which we do not say without shame—shall hereafter in no way be attempted contrary to the form prescribed. But if the chapter of Worcester considers that the same master should be postulated because of the prerogative of his merits, let it take care to present his postulation before the Apostolic See.

Chapter XXI

Latin source headnote: The electors cannot enter into a compromise to the prejudice of the person elected; but, if he has consented to his election or wishes to consent, notwithstanding an arbitral award rendered to the contrary, he is to be confirmed if no other canonical impediment obstructs him, even though he is not from the body of that church, whatever the cause for which an appeal was made by the greater part. And in this last point this text is very notable.

The same to the Archbishop of Genoa and the Bishops of Piacenza and Bobbio.

When a dispute had arisen among our beloved sons the canons of Savona concerning the election of a bishop, the votes of those electing being divided in different directions, our beloved sons S., subdeacon of Savona, and I., proctor of the chapter, approached the Apostolic See. We assigned to them as auditors our venerable brother I., Bishop of Albano, and our beloved son A., cardinal-priest of the title of Saint Martin.

The aforesaid proctor proposed that, when each person was asked, all by common assent agreed upon the Provost of Asti, with the exception of the aforesaid subdeacon; and, while he persisted in his obstinacy, the assent of the others was thereafter reduced to a public instrument. But on behalf of the other party it was proposed to the contrary that, since there were seven canons of Savona, they withdrew into chapter to deliberate concerning the future election of a bishop, where different persons were nominated by different men. But when the archdeacon, archpriest, and provost nominated the said Provost of Asti, the aforesaid S. strongly opposed it, asserting that he suffered from epilepsy, for which on another occasion he had been rejected as unsuitable, and that there ought to be no passage to another church until a suitable person was found in the church of Savona.

(And below:) But the Provost of Savona, disregarding the appeals that had been interposed, elected the Provost of Asti, the opposing party objecting that an election of this kind was not valid because of the appeals interposed and also other impediments.

(And below:) But the same provost and all the others also left the city, except for the aforesaid priest and subdeacon, and, without their knowledge, carried the seal with them. Approaching the Archbishop of Milan, they petitioned that the election they had made be confirmed, although it had been made by the provost alone and after an appeal. But because the improper course of the election had previously become known to the archbishop, he did not assent to their petition but sent one of his brothers to Savona to investigate the course of the election. When witnesses were produced before him, however, and it was requested that they should make equal provision for that messenger, the opposing party invoked the aforesaid archbishop, while the other invoked the Apostolic See.

But when at the messenger's command the parties had gone to Milan to seek *apostoli*—letters permitting prosecution of the appeal—they were diligently admonished by the archbishop to return to peace. The provost steadfastly asserted that he was willing to abide by his arbitration if the opposing party would do the same, which, after taking counsel, the aforesaid subdeacon promised. After this they returned to their own places and were then summoned again by the archbishop. The archpriest, furnished on behalf of the other party with letters of ratification, as he said, and S. himself on his own behalf took care to submit the matter by compromise to the Archbishop of Milan. He gave them as bishop Master G., described in the source as a *Modicensis* canon, and also confirmed him.

They publicly announced him as elected in the church of Savona, in the presence of the clergy and people of the city and with the customary solemnities employed. But, when the provost appealed to the Apostolic See, the archbishop deferred imposing the hands of consecration upon him.

(And below:) After these and similar matters had therefore been debated at length before the aforesaid auditors, who reported them to us sufficiently and faithfully, because full proof concerning them could not be made to us, we considered that the cause itself should be committed to your examination.

We therefore command your discretion by apostolic writings that, if it is established that the election of the aforesaid provost was celebrated and also subscribed by the greater and sounder part of the chapter, and if the said provost has consented to that election—so that through the mutual assent of the electors and the elected a bond as if of marriage has been spiritually contracted—unless it is sufficiently shown that the same provost suffers from epilepsy, concerning which it is said that an appeal was made against him, you are, relying upon our authority, to confirm his election, removing the impediment of every contradiction and appeal. The objection of the appeal is not to prevent this if perhaps an appeal is alleged to have been interposed for any of the other causes mentioned above, since from what was alleged before us we judge those appeals frivolous for a definite reason. Nor is what is alleged to have been done afterward by the aforesaid archbishop to prevent it, even if the parties submitted the matter by compromise to him, since the electors could not thus withdraw from such an election.

But if his electors did not submit the matter by compromise to the aforesaid archbishop, even if the said provost has not yet consented to the election made of him, nevertheless, if he wishes to consent and provided that he is free from the malady alleged, you are likewise to confirm his election.

Chapter XXII

Latin source headnote: A person elected by the greater and sounder part of the chapter, if he is and was suitable at the time of the election, will be confirmed. But if he was unworthy in orders, knowledge, or age and was knowingly elected, the person elected by the lesser part, if worthy, will be confirmed.

The same to the Bishop of Palestrina, legate of the Apostolic See.

Some time ago, when a dispute was brought to our hearing because, while the provostship of the church of Cologne was vacant, those electing had divided themselves into two bodies of voters, we considered that the cause should be committed to judges. After hearing what was proposed on each side, if this accorded with the will of the parties, they were to promulgate a definitive sentence; otherwise, they were to remit the cause, sufficiently instructed, to our hearing. They were to establish for the parties a suitable term at which they should approach the Apostolic See in person or through suitable representatives to receive sentence.

Wishing faithfully to execute the apostolic mandate, they summoned the parties before them, received the witnesses produced on each side, examined the consciences of those electing, and heard the allegations on both sides. And because the Provost of Saint George finally asserted that he was unwilling to abide by their sentence, they sent the proceedings to the Apostolic See, fixing for the parties the then approaching feast of Saint Michael as the term for coming to the Apostolic See, [which the Provost of the Holy Apostles, alleging that so prolonged a term had caused loss to the church, shortened to the feast of Saint Servatius.]

When the messengers of the Provost of the Holy Apostles approached our presence at the appointed term, the Provost of Saint George neither came nor sent a suitable representative for himself. [But our venerable brother the Archbishop of Cologne excused his absence, asserting that, after undertaking the journey to come to the Apostolic See, he had been captured and was being detained by the nobleman W., Count of Jülich. Lest we appear to dispose of anything to his prejudice, however, we commanded through our beloved son the Provost of Saint Gereon and B., his fellow canon, that

both parties be cited under a peremptory order for the feast of the Lord's Resurrection. As we learned from their letters, they cited the Provost of the Holy Apostles orally, and the Provost of Saint George both by letters and messengers; after receiving the citation, the latter wrote that he would approach the Apostolic See. But since, though awaited both at the term and beyond it for as many as eight weeks, he neither came nor sent a suitable representative, we adjudged him contumacious and condemned him to the opposing party's lawful expenses.]

Having viewed the attestations and diligently inspected the judges' acts, therefore, we found that authority favored the Provost of the Holy Apostles, but the number of electors favored the Provost of Saint George, since the first had been elected by fourteen persons—both dignitaries and canons—who preceded the others in dignity, age, and length of service, while the second had been elected by twenty-four.

Less knowledge, deficiency of age, and the fact that he had been constituted only in minor orders were objected against the Provost of Saint George. Hence, since an archdeaconry was annexed to that provostship, the dignity was not yet to be conferred upon him, by reason of which he was compelled to be promoted to the diaconate within the period fixed by the canons. On behalf of the other it was proposed that he was a man commendable in age, knowledge, and morals. His electors confessed that, led by a better zeal, they had therefore agreed upon him. Not only his own electors but also certain electors of the other asserted that he was more prudent, especially in spiritual matters, although they declared that the other, because of his power, was more useful, particularly in temporal affairs.

But because the allegations proposed before those judges on behalf of the same Provost of Saint George were not presented to us, for which reason we could not know for ourselves what he had objected or what he had answered to the objections, and thus the remitted cause had not been sufficiently instructed, [then] we did not consider that we should proceed to a definitive sentence. Instead, we committed the decision of the cause itself to the judges under this form: if it either was notorious or was established through the matters already stated that, at the time of the election, the Provost of Saint George suffered a defect in orders, knowledge, or age that, according to the canonical sanctions, prevented him from being promoted to such an office, then, removing the impediment of appeal and notwithstanding his bodily absence, they were to impose silence upon him, adjudge the same provostship to the Provost of the Holy Apostles, and, putting him into bodily possession, cause him to enjoy peaceful possession.

Otherwise, since not only more persons but nearly two parts had agreed upon him, and, impediments ceasing, it appeared that they had elected him with good zeal, they were, after quashing the election of the Provost of the Holy Apostles and removing appeal, to confirm his election, cause the aforesaid provostship to be assigned to him, and cause answer to be made to him thereafter as provost, [restraining objectors, etc. Given at the Lateran, on the fifth day before the Ides of April, 1203.]

Chapter XXIII

Latin source headnote: Those who receive a man postulated to a church as instituted or as administrator before the postulation has been admitted by the superior are deprived of the power of electing, and the power of electing devolves upon the others, although they are fewer. And if all are

deprived, in cathedral churches it devolves upon the Pope. Say this according to the more principal understanding, which agrees more closely with the text.

The same to the canons of Mainz.

After C. of good memory, Archbishop of Mainz and Bishop of Sabina, entered upon the way of all flesh, your votes divided in different directions. Some petitioned for the Bishop of Worms, while others elected as their pastor our venerable brother, now your archbishop but then Provost of Saint Peter of Mainz. Our beloved son Master P., scholasticus of Mainz, approached the Apostolic See as proctor, together with certain others, for those who postulated the Bishop of Worms; for the others, our beloved sons E. and R., [Mainz] clerics, came, one of whom was appointed proctor.

When the parties were therefore constituted in our presence and had been diligently and sufficiently heard in our consistory, by the counsel of our brothers we commanded our venerable brother the Bishop of Palestrina, legate of the Apostolic See, that, if it were established that the same bishop had received the church of Mainz with respect to temporal or spiritual matters or had administered temporal or spiritual affairs in it, as had been objected by the other side, he should, removing the impediment of every appeal, declare invalid the postulation made of him. By our favor he was to permit the same man to retain the church of Worms. For by the common law, because he presumed to transfer without our authority, he was to be despoiled of both, so that [also] he would lack that which he avariciously coveted and that which he proudly despised. But if he scorned to obey, the legate was by our authority to declare him deprived of both churches.

Then he was to inquire more diligently into the truth concerning the election of the archbishop himself. If the violence which he and his men feared were established to him, he was, notwithstanding that the archbishop's election had been proceeded with after an appeal was interposed to us, to confirm the election, provided that nothing in the canonical institutes obstructed it, removing the impediment of appeal. For the others, who did not consider that they should defer to the appeal interposed to us lest an election be proceeded with without him and his associates, could not use this exception against him, since he who commits an offense against the law invokes the law's aid in vain. Hence it did not seem that they could object that the same man had been elected by fewer persons, according to their assertion, since by contemning the appeal lawfully interposed to us and receiving the aforesaid bishop without our license, they had rendered themselves unworthy.

But if it were established that the aforesaid bishop had neither received the aforesaid church with respect to spiritual or temporal matters nor administered spiritual or temporal affairs in it, the same legate was to hear what was proposed on each side concerning his postulation and the archbishop's election, receive witnesses on both sides, and, after publication of their depositions, proceed as far as the point of definitive sentence. He was to send all the acts under his seal to our presence, fixing for the parties a suitable term at which they should present themselves before the apostolic sight to receive sentence.

Although the matters objected against the said Bishop of Worms and his supporters were notorious, the aforesaid legate nevertheless, for greater caution, received many eminent witnesses produced by the archbishop's party, who gave sworn depositions concerning the aforesaid matters. Hence, proceeding according to the tenor of our mandate, he quashed the postulation made of the Bishop of Worms and took care by apostolic authority to confirm the election of the aforesaid archbishop,

although it had been celebrated by very few. He ordained him priest and finally consecrated him archbishop.

The archbishop himself, humbly approaching our presence, petitioned that we confer upon him the pallium, namely the insignia of the pontifical office, from the customary benevolence of the Apostolic See. But a certain simple messenger sent by his adversaries to the Apostolic See presented to us on their behalf open letters with a pendent seal. Through them the same canons signified that the aforesaid legate, corrupted by money, had rendered an unjust sentence. They added that the citizens of Mainz had likewise sworn that they would never have him as bishop and that all the clerics, with a few exceptions, favored their own elect.

When we began to deliberate concerning these matters with our brothers, two things appeared to obstruct the election of the same archbishop: namely, that he appeared to have been elected by very few and after an appeal interposed by himself. For, since the postulation of the Bishop of Worms had been quashed by reason of the preceding appeal, the archbishop's election ought also to have been quashed for the same cause.

But to the contrary, as was expressed above, those who had offended against the appeal could not allege that appeal against the same archbishop. It could also be said that, although the often-mentioned archbishop had been elected after the appeal, he nevertheless was not elected contrary to the form of the appeal, since he had appealed under this form: that the canons residing at Mainz should not proceed with the election without him and his associates. Nor is it harmful that it could be replied by the other side that neither ought he and his associates to have proceeded without them, because, by contemning the appeal interposed before us, they had rendered themselves unworthy and abused their right.

Hence, since it was established in the Lateran Council concerning those who elect certain prohibited persons that they should know themselves then deprived of the power of electing and suspended from ecclesiastical benefices for three years, when the others fell from the power of election as unworthy for a far greater offense, the right of electing remained only with the same man and his associates. Consequently, even if far fewer than did agree upon him had agreed upon him, it must nevertheless be understood that all those who were then able to elect elected the same man.

Against the legate's procedure, however, it appeared to count that he proceeded without citing the Bishop of Worms and his supporters. But according to the canonical sanctions, a notorious excess requires no examination; and in favor of those things done by a judge it is presumed that all were regularly celebrated. Moreover, that they were not cited could not easily be proved, because by the nature of things there is no direct proof of a negative fact. Although each of you could assert of himself that the citation did not reach him, nevertheless each would be a singular witness in his testimony.

They could also, had they wished, have sent a suitable proctor safely to the legate himself, just as [also] they had sent a messenger, as is proved from their letters directed to us. He safely approached the same legate and returned to his own place, since the legate himself was also prepared to provide security in every respect. Nor does it obstruct this that the same messenger is said to have appealed, since he renounced the appeal and the impediment of appeal had been removed in our commission, which each party had carried back. But it also did not appear who could object and prove anything

against the legate's act, since not a sufficient proctor but a simple messenger had been sent to us against the aforesaid archbishop.

[Furthermore, even if such a person appeared, he should by no means be heard, since the archbishop's adversaries rendered themselves unworthy of a hearing before us through presumption, contempt, and blasphemy. It was presumption that, contrary to canonical form and without our authority, they presumed not only to elect but also to receive a man endowed with pastoral dignity and joined to another church by spiritual marriage. Contempt was added from the fact that, after their proctor reported our letters, in which it was expressly commanded that, if the Bishop of Worms had received the church of Mainz with respect to temporal or spiritual matters or had administered temporal or spiritual affairs in it, his postulation should be quashed, it did not come into doubt for them but rather was manifestly established that the man of Worms had at least received the temporalities and administered them. Nevertheless, they thereafter rashly obeyed him as their elect, as appears from their letters, in which they call him their elect and assert that they favor him by unanimous assent; and they assented to him, perpetrating spiritual adultery with him, since through the messenger last sent to us they also petitioned in public consistory that his election be confirmed. Blasphemy then followed in that, setting their mouth in heaven and defaming, so far as lay in them, our legate—who exercised our office in those regions and who, even before he was assumed to the pastoral office, had been a man of great religious life, inasmuch as he had first been an abbot in the Cistercian Order—they lied that he had been corrupted by money.]

We therefore, although because of judicial authority we presume in favor of those things done by the legate, nevertheless rely more upon the reason that the archbishop's adversaries, for the three aforesaid causes, rendered themselves unworthy to such an extent that they ought not to be heard against him. Hence, what had been done concerning him could not be impeded by them. Indeed, even if the electors of his party had likewise offended so that they rendered themselves unworthy, provision for the church of Mainz would on this occasion have devolved upon us. Consequently, without injury to the law, we could have placed the said archbishop over that church as its pastor, especially since he had been consecrated Bishop of Mainz by a legate of the Apostolic See.

Therefore, having held diligent deliberation with our brothers concerning these matters, by their counsel we hold ratified the quashing of the postulation made of the Bishop of Worms, confirming the election of the aforesaid archbishop. [Given at the Lateran, on the tenth day before the Kalends of April, 1202.]

Chapter XXIV

Latin source headnote: For the elected person to obtain the office, it is sufficient to show that the elector was in quasi-possession at the time of the election, although he does not prove that ownership of the right of electing belonged to him.

The same to the clerics of Saint Agatha.

The complaint which our beloved son G., now cardinal-priest of the title of Saint Vitalis but then cardinal-deacon of Saint Mary in Aquiro, brought through the administrator of your church, of which the same cardinal is governor, against P., now priest but then deacon of the church of Saint Saviour called *de Cornutis*, before Pope C. of good memory, our predecessor, concerning that church itself,

Pope C., our predecessor, committed to us, while we were constituted in a lesser office, to be heard and examined.

The same administrator therefore sought the removal of the aforesaid P. from the church of Saint Saviour, which he had presumed to occupy to the prejudice of your church and the injury of the aforesaid cardinal, since the church of Saint Saviour belonged by full right to the church of Saint Agatha. He also sought the restoration to him of the pension of sixteen Pavia denarii owed to the church of Saint Agatha for the same church of Saint Saviour of the Baths, which had newly been withheld.

The aforesaid cleric P., however, answered that he had inflicted no injury upon the cardinal and had not received the said church to the prejudice of your church, since it belonged to it by no right and he owed no pension to it; rather, through election by the people, to whom the election belonged by ancient custom, he had been canonically instituted by the cardinal of Saint Susanna, to whose title the same church of Saint Saviour was subject in spiritual matters as a chapel.

When each party had many times produced witnesses to prove its assertion, we received and diligently examined them, and, when their depositions had been published, we heard disputation upon them. But before a controversy of this kind could reach an end, our aforesaid predecessor discharged the debt of the flesh. At length, however, each party urgently petitioned us that we deign to decide the cause itself.

We therefore, having diligently heard and more fully understood the arguments of each party and taken the counsel of our brothers, absolved the said P. from the claim of your administrator concerning the election and institution made of him in the church of Saint Saviour, and considered that silence should be imposed upon the aforesaid administrator concerning these matters. For it was clearly established to us through suitable witnesses that the people were in quasi-possession of presenting a cleric to that church when they elected the priest himself to it, and that the same church pertains by full right in spiritual matters to the title of Saint Susanna, saving the question concerning the right of patronage between your church and the people of the often-mentioned church of Saint Saviour.

But because it was clearly proved through witnesses greater than every exception that the pension of sixteen denarii of Pavia currency had for many years been paid annually to the clerics of your church for the church of Saint Saviour of the Baths but was newly withheld, we decree that your church is to be restored to the same state of receiving a pension of this kind from the church of Saint Saviour of the Baths. We condemn the aforesaid priest to payment of the pension withheld, saving the question of ownership between the aforesaid churches. [Given on the second day before the Nones of June, 1205.]

Chapter XXV

Latin source headnote: Those knowingly electing an unworthy person are deprived of the power of electing in the election that first occurs to be made.

The same.

When the church of Winchester was without a pastor, the archdeacon with his supporters elected the Dean of Salisbury, while the prior and his associates elected the Precentor of Lincoln as bishop.

[When because of this the parties had approached our presence, since they disagreed not a little concerning the sequence of what had been done, we caused witnesses to be received on both sides and ordered the attestations to be published. Having understood them perspicaciously, after sufficient allegation had been made by each party, we deliberated diligently with our brothers concerning the rendering of sentence. We found that both elections had been attempted contrary to canonical form; and, to say nothing of conspiracies, appeals, and excommunications, we discovered that the first was made through disorderly presumption and the second through violent pressure. Therefore, proceeding by the royal road, we considered that both should by the demand of justice be judicially invalidated.

But after some days, the party that had elected the Precentor of Lincoln approached our presence and produced a certain instrument under the chapter's seal, in which it was expressly contained that the convent of Winchester had committed its authority to the prior and certain brothers concerning the election of a bishop to be celebrated in our presence and had conferred upon them full and free power to elect a bishop for it. It therefore humbly petitioned from us license to elect. We caused the instrument to be exhibited to the other party, and, when it had been approved by all, we asked whether these wished to elect with those or rather without them. Having taken counsel, they answered that, saving the exceptions they had against them, they wished to celebrate a unanimous election with them.]

Therefore, although they all deliberated in common concerning making the election, nevertheless, because they were unable to be concordant, they had recourse to us with the business unfinished. Those who had elected the precentor asserted [firmly] that those who had elected the dean were deprived of the power of electing, especially for the reason that they had knowingly presumed to elect a man not legitimately born. Hence, according to the Lateran Council, they had both lost the power of electing on this occasion and ought to lack ecclesiastical benefices for three years. They humbly petitioned that we deign to pronounce an interlocutory sentence upon this.

The others answered that, although the man whom they had elected had been less than legitimately born, nevertheless he had merited to be legitimated through the favor of the Apostolic See, and they asserted that they would lawfully prove this. We therefore, considering that the former had admitted the latter to celebrating the second election after the first election, and that the decree of the aforesaid council decreed that presumers of this kind were deprived of the power of electing for one occasion only, judged that they were to be admitted to elect, since the election they wished to celebrate before us was now not the second but the third to occur, in such manner that the proctor of the archdeacons should participate without prejudice to the monks.

When they had again assembled in one place to deliberate in common concerning making the election, they were nevertheless unable concordantly to agree upon one vote, although each party agreed in common upon this: that unless the election was celebrated before us, irreparable harm threatened the church of Winchester. But, through him who makes both one, at last they returned to unanimous concord, electing for themselves by equal assent the aforesaid precentor as bishop.

We, wishing to safeguard both our honor and ecclesiastical liberty, decreed that the election should not be confirmed before they had publicly sworn in our consistory that they were neither bound by any obligation nor induced by any coercion to celebrate an election of this kind. The oaths having therefore been received in this manner, we examined both the election and the elected person.

When through the letters of our venerable brother [name omitted], Archbishop of Tours, as well as those of many others, it had been most fully established to us and our brothers that his ordination was canonical and his birth legitimate, and when our dearest son in Christ J., illustrious King of the English—to whom, with willing spirit, we defer as much as we can with honor—had given his assent, as became known to us from his letters patent, with the other requirements regularly concurring, because no delay or difficulty ought to be brought against upright arrangements, lest the Lord's flock long lack pastoral care, we considered that the election itself should be confirmed by the common counsel of our brothers. [Wherefore, to all of you, etc. Given on the eleventh day before the Kalends of July, in the eighth year, 1205.]

Chapter XXVI

Latin source headnote: One who knowingly elects an unworthy person as bishop is for this reason suspended from the benefices of the church for three years and cannot meanwhile be elected or assumed to one of its dignities.

The same to the Abbot of Cîteaux and the monks R. and P. of Fontfroide.

Through the inquiry which you conducted at our command concerning the condition of the bishopric and Bishop of Toulouse, we clearly understood that Mascaron the chancellor asserted under oath that he knew for certain that R., formerly Bishop of Toulouse, and his friends had, before his election, held a conference with certain canons expressly named and solicited them with entreaties to elect him as bishop. He also asserted that he had both seen and heard when the aforesaid bishop, while in the house of Saint Peter *de Coquinis*, acknowledged in the presence of certain canons that he had sworn to those canons who had opposed his first election in the house of Acton de Montibus. He believed for certain that that oath was unlawful and was furnished according to a pact so that the same R. would be elected. He also asserted that, after the first election of that man had been quashed, he himself held the episcopal house in that man's name, receiving certain rents and revenues which, with the bishop's knowledge and assent, he expended in that man's affairs.

Therefore, since by knowingly electing such a person as bishop, as he affirmed by his own oath, he rendered himself unworthy of ecclesiastical benefices, we bear it heavily and grievously that the same Mascaron is said to have been substituted as provost for our beloved son the Provost of Toulouse, who was elected Bishop of Comminges.

Wherefore we command your discretion by apostolic writings that, entirely removing the same Mascaron from the office of provost, you cause a suitable man to be assumed to that office. [Restraining objectors, etc. Given on the second day before the Nones of July, in the eighth year, 1205.]

Chapter XXVII

Latin source headnote: If one who is not professed is elected to the governance of a regular church, the election is quashed, notwithstanding a custom to the contrary.

The same to the Prior of Saint Fridianus and G. and G., canons of Lucca.

When we formerly considered that the cause being conducted between Bonus the priest and Brunus, a canon of the church of Saint Peter of Lucca, should be committed to you—concerning the fact that

the said priest Bonus is said to have been elected prior by the greater part of the canons of the same church, the aforesaid B. and a certain other dissenting—you took care, as we learned from your letters, to cite the parties, so that according to our mandate you might be able to conclude the cause itself by a canonical end.

When they were constituted in your presence, the said priest Bonus urgently petitioned that by apostolic authority you take care to confirm the election made of him. But the aforesaid Brunus answered to the contrary that he was not worthy of the governance of the priory, objecting against him the crime of simony, and that his election had not been canonically celebrated. And, because he was not professed, he asserted that he was deservedly to be rejected.

But since nothing concerning simony had been proved and nothing had been shown against the manner of the election, the privilege of the church itself greatly moved you. It expressly contained that no one should be placed over it through any cunning of subreption unless the brothers by common assent, or the sounder part of the brothers' counsel, according to the fear of God and the Rule of Blessed Augustine, should provide that he be elected. Although many priors continuously, one after another, had been unprofessed in that church throughout many and long periods, nevertheless, because the aforesaid priest B. has not professed regular observance, you doubt—and rightly—to proceed without consulting us contrary to the privilege granted to the aforesaid church by the Apostolic See.

Therefore, since we ought not to consider only what has been done but rather what ought to be done, we answer your consultation in this way: because according to divine law one must not plough with an ox and an ass, nor ought anyone put on a garment woven of wool and linen, removing the impediment of any appeal, you are to invalidate the aforesaid election. You are to compel the aforesaid priest and the other unprofessed clerics either to profess and observe the Rule of Blessed Augustine established in that church or to leave the church entirely. [Restraining objectors, etc. Given at Ferentino on the eighth day before the Ides of July, 1203.]

Chapter XXVIII

Latin source headnote: The nomination or appeal of one who has no interest does not impede an election. But if one who should be summoned is contemned, and he prosecutes the contempt, the election is quashed even if confirmed; and he can prosecute it unless he has consented to the election, which he can do even after the fact. This is what it says down to § *Concerning this*. — § 1. A bishop, while the Mass of his consecration is being celebrated, or an archbishop before receiving the pallium, ought not confer orders. This is what it says down to the words *But as to*. — § 2. This passage is not summarized, both because of the diversity of readings and because it does not pertain to the title. Abbas.

The same to I., cardinal-priest of the title of Saint Stephen in the Caelian Hill, legate of the Apostolic See.

That, as we learned from your letters [recently presented to our apostolate, after many labors by sea and land and among diverse peoples you prosperously arrived by God's grace to execute the office of legation enjoined upon you, and that you endeavored as far as you could to reform the Irish church for the better, as the manifestation of the work itself makes evident, we hold most gratifying and acceptable, and we greatly commend in the Lord the zeal of your solicitude.

But you were unwilling to conclude without our counsel the business of the church of Armagh, which appeared arduous and difficult to you. Rather, you considered that the sequence of that business should be intimated to us through your letters, so that from our subsequent rescript you might know how you were to proceed in the business itself.

For, as we perceived was contained in your letters, when the Archbishop of Armagh of good memory entered upon the way of all flesh, the royal justiciar summoned the Archdeacon of Armagh so that, for the substitution of a bishop, lest the peace of the kingdom be in any way impeded, he would summon the suffragans of the church of Armagh and all those who ought to assemble to hold a convention. Thus all were said to have been summoned through him. But few of those to whom the election belonged assembled at the village of the Bridge: namely, two suffragans of the church of Armagh, the Abbot of Mellifont, who displayed a privilege that he had the first voice in the election, and the aforesaid Archdeacon of Armagh.

Having taken counsel, they are said to have agreed upon three persons: namely, the Bishop of Meath, who was one of the suffragans, the Archdeacon of Meath, and Master Manfred, the royal chaplain. But one of the two bishops who had assembled for that nomination, when asked, steadfastly asserted that he had been present at that election but had remained silent and had not given his assent in the election itself. The others asserted to the contrary that they believed he had assented because he was present and in no way contradicted it.

Afterward, when many days had elapsed, the aforesaid Archdeacon of Armagh summoned the suffragan bishops at Armagh. All who assembled in the metropolis itself, except the Bishop of Meath and the Abbot of Mellifont, who could not for any reason assemble there among the Irish, elected the abbot of the regular canons of Bangor as archbishop. As they said was customary, they consecrated him bishop on the following Sunday. After his own anointing and before the solemnities of the Masses had ended, he ordained a certain man as acolyte and presumed to administer. When you gravely reproved him concerning this, he said—and others from his regions confessed—that such a custom had hitherto been observed in Ireland.

There was indeed the greatest contention concerning an election of this kind between the Irish and the English, because the English steadfastly asserted that they were wholly unwilling to have any Irishman as their archbishop and would in no way suffer it. Certain English and Irish persons, proposing very many things in this manner in your presence, asserted that, if an Englishman were placed over the church of Armagh, useful provision would not be made for that church and the peace of the whole land.

Afterward, when administration had been forbidden by you to the said elect and granted to the aforesaid archdeacon, one of the suffragans objected against him that he had alienated a certain silver tablet from the church of Armagh. He finally confessed to you that he had received the tablet itself from the clerics and laymen of Armagh and sold it for twenty-five marks, but he steadfastly promised that, whatever should befall him, he would guard against loss to the church itself concerning this.

You signified to us besides that, after the first election was held at the village of the Bridge, an appeal was made to our hearing lest anything be done to the prejudice of that election and of the dignity of the king, who asserts that his assent is required in elections.]

We therefore, having diligently inspected the tenor of your letters, perceive six things contained in them, of which three appeared to operate against the aforesaid elect and three others against his election. The first is the nomination made of three persons, which in your letters you several times call an election; if it was a true election, nothing ought in any way to have been attempted against it before it was quashed. The second is the appeal interposed, which, if lawful, wholly impeded the subsequent election. The third is that the Bishop of Meath and the Abbot of Mellifont, who ought to have participated, did not assemble for the election. Hence, if one or both were contemned, their contempt ought to have impeded the aforesaid election more than the contradiction of many.

The fourth is that the aforesaid abbot, thus elected, presumed to administer before obtaining confirmation. The fifth is that he celebrated orders on the day of his consecration, although he had not yet obtained the pallium. The sixth is dilapidation, because he did not at all fear to alienate the silver tablet.

But since the first election, which was made of three persons, appears rather to be called a nomination, since only four of all those to whom the election belonged assembled—namely, two suffragans of the church of Armagh, the aforesaid Abbot of Mellifont, and the Archdeacon of Armagh —and no right was acquired by the nominated persons from such a nomination, it was lawful to proceed to an election regularly celebrated, especially in the church of Armagh, since according to the canonical constitutions an election ought, if possible, to be celebrated in the cathedral church.

Nor could such an appeal as was interposed impede that election, since nothing in it was attempted to the prejudice of the royal dignity. For not a simple nomination but a solemn election ought to be presented to the prince so that he may give assent to the postulation, even if some persons, through usurpation, sometimes abusively do otherwise.

But if the aforesaid Bishop of Meath and Abbot of Mellifont, who ought to have participated, were not contemned but were summoned to the election—provided that they could have been summoned without danger—then whether they were unable or unwilling to approach for celebrating the election, their absence could not impede the election. For, if they could not safely travel to that place among the Irish, neither could the others securely assemble at another place among the English. Because of this, we believe that you should inquire more diligently into the truth concerning this. If it is established that they were summoned, and if, after being summoned without danger, they were unwilling or unable to come to celebrate the election, then, if no other canonical impediment obstructed it, the election itself ought not in any way to be invalidated because of their absence. But if it is established that they were not summoned but were contemned, the election thus celebrated is to be entirely invalidated, unless afterward, having been diligently admonished for the good of peace, they take care to consent.

Moreover, since that election was celebrated before you arrived in the Irish regions and the elect himself immediately began to administer, you can sufficiently pass this over by dissimulation. For, as you know, the Roman Church tolerates this concerning the metropolitans of England, France, Germany, and other remote regions who are concordantly elected, the utility of the churches having been weighed. For if, during the great length of time until the elect could obtain confirmation with the pallium from the Apostolic See, he did not receive the regalia, the church, which in the meantime would lack an administrator, would incur no slight loss.

§ 1. Concerning the fact, however, that on the day of his consecration, before the solemnities of the Masses had ended, he ordained an acolyte, you are to reprove and chastise him for such an excess, unless perhaps you learn that this belongs to an ancient custom of the church of Armagh. If it is established to you concerning that custom, you will be able mercifully to tolerate what has now been done because of the simplicity and rudeness of that people. You are nevertheless strictly to prohibit on our behalf that anything similar be attempted hereafter.

For only the Roman Pontiff—who, as you know, is consecrated before the angelic hymn and afterward himself begins and, having been consecrated, completes the solemnities of the Masses—can celebrate orders on the day of his consecration. But the others, who are consecrated between the Epistle and Gospel, because after being consecrated they concelebrate with the principal celebrant, ought not then celebrate orders, lest the mystery of unity be divided.

Furthermore, since an archbishop without the pallium is not permitted to summon a council, confect chrism, dedicate basilicas, ordain clerics, and consecrate bishops, he surely presumes greatly who hastens to ordain clerics before he obtains the pallium, since he appears to do this not as a simple bishop but as an archbishop.

§ 2. But as to the fact that he is said to have sold the silver tablet, provided that he renders the church of Armagh free from loss, as he promised, you will be able to pass it over with equanimity, since this proceeded from the will of the clergy and people. Indeed, according to the matters you intimated to us through your letters, we considered that we should write back to you in the aforesaid manner. But since you are able to have fuller knowledge of the circumstances of the same business and we greatly trust in your discretion, we believe that in this and other affairs you will, with the Lord as your author, proceed in such a manner that the prudence of your solicitude can deservedly be commended and your legation will redound in many ways to the honor and advantage of the Apostolic See. [But after the letters, etc. Given. … 1202.]

Chapter XXIX

Latin source headnote: An election made by the lesser part of the chapter is not valid and cannot be ratified by subsequent assent. This is what it says according to the common understanding.

The same to the Bishop of Toledo and the Abbots of Sagon and Ardenne.

Having heard and understood the merits of the cause concerning the two elections celebrated in the church of Bayeux—one of G. the archdeacon and the other of R. the subdeacon—we found that both had been attempted contrary to canonical form. For, when the wishes of each person had been ascertained, the dean with the fewer agreed upon R., and the cantor with the more numerous agreed upon the said archdeacon G. Afterward, when the cantor alone nominated a certain other man, namely Master R. de Algediis, an appeal was made to our hearing that the dean, who had the first voice in the election, should not proceed to an election without the assent of the entire chapter or of its greater and sounder part, so that the door of discord, which already seemed open, might be closed through the impediment of appeal.

But the dean himself, without having the assent of the greater part of the chapter but only that of a far lesser part, suddenly broke forth into an election, appealing that no one should attempt anything against the election itself. This was so although he asserts that immediately afterward several others

assented to the election made; nevertheless, what was not valid from the beginning could not acquire validity after the fact, since an election which was invalid by the law itself could not be made ratified through subsequent assent, especially while an appeal was pending.

Therefore, after they returned to their own places, the cantor and the others who had remained in the chapter, after that election had not yet been quashed and an appeal had been interposed to us, withdrew from the nomination of the said archdeacon. Anew they presumed not only to elect the aforesaid subdeacon without the knowledge of the Roman Pontiff or even of their own metropolitan, since he was a subdeacon, but also, with the bells rung and a solemn procession, to conduct him into the church while singing a hymn.

We therefore, having diligently heard these and the other matters proposed before us, considered by the common counsel of our brothers that both elections should be invalidated. [By apostolic writings, etc. Given at Rome at Saint Peter's, on the tenth day before the Kalends of May, in the eighth year, 1205.]

Chapter XXX

Latin source headnote: Power given to compromissaries to elect a prelate cannot be revoked when the matter is no longer intact; and the matter ceases to be intact after the compromissaries have begun to deliberate.

The same to the Abbots of Grand-Selve and Belleperche.

In causes which [are referred to the examination of the Apostolic See, the laws ought to be subtly observed, because what is adjudged by the Roman Pontiff in one cause provides a form of judging in other causes.]

Indeed, when the church of Toulouse was vacant, two persons were nominated through the division of its chapter, namely our venerable brother the Bishop of Comminges and our beloved son R., Archdeacon of Agen. R., canon of Saint-Lizier, B. the archdeacon, and R., canon of Saint Stephen of Toulouse, approached our presence on behalf of the said bishop; and on behalf of the other party our beloved son Master P. de Rama and G., his associate, approached. We appointed as auditors for them our venerable brother the Bishop of Albano and our beloved son H., cardinal-priest of the title of Saint Martin.

Before them the aforesaid messengers proposed that, when the chapter of the church of Toulouse assembled to deliberate concerning the election of a bishop, they elected two men, namely R. de Ponte and M. the cellarer, to choose five electors from the same chapter. These, after furnishing an oath, were to deliberate concerning the election of a bishop to be substituted. It was established and conceded by each person of the chapter that the person whom those five concordantly, or three of them, elected should, if the person were suitable, be held by them as bishop without any contradiction.

It was also expressly established that, if the five electors could not agree upon one person, when three of them agreed the remaining two would be bound to follow their assent and hold their election ratified. Afterward, when five electors had been selected by the aforesaid two and had withdrawn apart to deliberate concerning the election, but were not all able equally to agree upon one person, three of them agreed upon the aforesaid Bishop of Comminges, who had been archdeacon of the

church of Toulouse. Before they announced his nomination, they placed it under apostolic protection; then they published to the chapter the election they had made to postulate the same bishop. The remaining two, subsequently on the third day and together with a few from the chapter while the others were absent, elected the aforesaid Archdeacon of Agen.

The aforesaid R. and the other messengers also added that a special messenger had been sent by that party to our beloved son I., cardinal-priest of the title of Saint Prisca and legate of the Apostolic See. Since the bishop himself had to be postulated from us and the legate had no power to grant or transfer him, because a dispensation of this kind is reserved to the Apostolic See alone, the messenger appealed to our hearing lest anything be done to the contrary.

But the aforesaid messengers of the archdeacon answered to the contrary before the aforesaid auditors that, when the aforesaid five electors, to whom the entire chapter had transferred the power of electing, were deliberating separately concerning the election, they dissented among themselves to such an extent that their contentious voices were heard by the brothers who remained in the chapter. The chapter, holding them suspect because of contentions of this kind, sent two canons to them, through whom they prohibited them on our behalf and that of the aforesaid legate from proceeding further in the matter. Thus they revoked the power of electing which they had committed to them, commanding them to return to the chapter and deliberate concerning the election equally with the other brothers.

Two of the electors gave their assent to this revocation, and, while the remaining three did not contradict it, those two returned with the chapter's messengers to the chapter itself. But the other three, having followed them as far as the doors of the chapter, afterward departed from them. The chapter, wondering at their absence, after waiting for their presence for that whole day, on the following day caused the bell to be rung, as is customary, to assemble the chapter. While the aforesaid three with a few of their associates kept themselves contumaciously absent, the prior, sacristan, and greater cellarer of the church of Saint Stephen, because they had a special mandate concerning this from the absent provost, together with the greater and sounder part of the chapter and after summoning abbots, priors, monks, and other religious men, elected the aforesaid archdeacon as bishop.

The messengers of the same archdeacon also exhibited the letters which the aforesaid legate sent to us concerning this. [Their contents were that, when the chapter of Toulouse held deliberation concerning the election of a bishop, with some electing the Bishop of Comminges and the rest the Archdeacon of Agen, it divided its votes in two, and each election was presented to him by the different parties at different times] (and below).

When the aforesaid auditors had faithfully reported the foregoing matters to us and our brothers, we believed for certain that the aforesaid legate had had a pious intention in this matter. Nevertheless, from the very tenor of his letters we understood that he had been circumvented, and we perceived that, with the truth suppressed, whatever had been obtained from him had been elicited and extorted through subreption, since in those letters he had not expressed the form of the postulation.

For the postulation of the Bishop of Comminges had preceded and had been made by those to whom the whole chapter had transferred the power of electing, for which reason it is understood to have been made unanimously by the assent of the entire chapter. The chapter could by no means revoke

that power when the matter was no longer intact, because the electors had already proceeded in deliberation and three, while two dissented, had agreed upon one person. This is especially so since the reason was that those five were discordant, whereas in the transfer of that power it had been manifestly expressed that, if it happened that the five dissented, they should hold the election of the three ratified and firm.

Furthermore, it is clear that the same legate was deceived, since in his commission, passing over the election of the bishop—who had to be postulated from us alone—he committed an inquiry under the form expressed above concerning only the election of the archdeacon. They would in no way have proceeded thus concerning these matters if everything had been narrated to him in order, just as it truly occurred.

Hence, after sharing the counsel of our brothers, we decree that the election of the archdeacon himself is to be entirely invalidated, not because of any defect or fault of his own person, but because we recognized that its course was less than canonical and that the legate himself was multiply circumvented.

Wherefore we command and strictly order your discretion by apostolic writings that, if you find the person of the bishop himself useful and necessary for the governance of the church of Toulouse, and suitable both in knowledge of letters and by the example of his manner of life for rooting out from the diocese of Toulouse the perfidy of the heretics, which through the negligence of the prelates has hitherto miserably and damnably sprouted there, and if this is thus established to you, you are by our authority to grant him license, because of the urgent necessity and their utility, to transfer to the church of Toulouse, removing the impediment of every contradiction and appeal. Otherwise, after rejecting his postulation, you are by apostolic authority to enjoin the chapter of the same church to elect a person suitable for this as pastor.

Chapter XXXI

Latin source headnote: By custom the election of canons can belong to the chapter alone. This is what it says, and it is customarily alleged every day.

The same to the Bishop of Florence.

When the church of Volterra had for a long time been destitute of the due service of canons, our venerable brother the Bishop of Volterra, wishing to repair the deficiency of ministers in that church, elected certain canons and instituted them in it. The resident canons refused to receive them, asserting that an election of this kind had been attempted to their prejudice.

When the bishop himself sent us his complaint concerning this, we committed the cause to you to be concluded by a canonical end.

[When the parties were constituted in your presence, the same bishop petitioned you through his representative that you prohibit our beloved sons Master Mitidus, Ildebrandus, Placidus, Ptolemy, and Sofredus from the injury which they inflicted upon him concerning the election of canons of the church of Volterra, and that you cause them to permit him freely to use the right of election and not contradict him when electing or wishing to elect. The same bishop asserted that the right of electing canons belonged to him in many ways.

He proposed that this belonged to him by common law because, as the statutes of the sacred canons declare, a bishop has full disposition, provision, and jurisdiction in his own church. For although any of his subjects might precede in his own office and honor, the bishop is nevertheless provider and ordainer in all things.

He also proposed that, by approved custom, the election of canons in that church belonged to him, as it did to the other prelates of the region, who were accustomed to make elections of clerics either by themselves or with associates. But even if it were doubtful what kind of custom was observed there in such matters, recourse should be had to the Apostolic See, since in other churches subject to a metropolitan, recourse is had in doubts of this kind to the custom of the metropolitan church. Hence, since at the Roman Church the Supreme Pontiff alone elects cardinals, the same bishop proposed that the election of canons in his church belonged to him alone.

He alleged in addition that, even if an election of this kind belonged to him by no law, the authority of electing had nevertheless devolved upon him because of the canons' negligence. For it is permitted by the sacred constitutions that every bishop, with pastoral diligence, supply the negligence of his clerics. It is also known to have been established in the Lateran Council that, when the grant of a dignity or benefice belongs to a chapter, if it delays conferring it within the space of six months, the bishop is to carry this out.

On behalf of the chapter, however, it was answered to the contrary that by common law the election of canons belonged not to the bishop but to the chapter itself, to prove which they alleged certain canons. But since diverse statutes of the canons have been issued concerning this, a diversity of this kind appeared rather to be referred to the customs of the different places: in some places the election of canons belongs to the bishop alone, elsewhere to the chapter alone, and in some places equally to both.

Nor did the custom of the Apostolic See, which the aforesaid bishop introduced on his own behalf, appear able to prejudice the canons. For although the Supreme Pontiff alone elects cardinals, in his own cathedral church—namely, the Lateran—or in the basilica of the Prince of the Apostles, the chapter is accustomed to elect fellow canons for itself. Nevertheless, in those churches as in others, the Roman Pontiff sometimes elects canons from the plenitude of power.

To the objection the bishop then made—namely, that the right of electing had devolved upon him because of the chapter's negligence—the party of the chapter answered that, because of a neglect of this kind, the bishop could not claim the right of electing for himself unless a canonical admonition had first been given. In such a case no time that might supply the place of an admonition or be deemed to make a demand is fixed by the canon, especially since he himself, according to the decision of his own will, refused to confirm those elected by the canons and presented to the bishop.

Since it belongs to ordinary law that admonition ought to precede punishment, and the bishop, under the pretext of negligence and with admonition omitted, inflicted a penalty, the same party proposed that what is known to have been rashly attempted by him should deservedly be disapproved.

The party of the chapter also added that the statute of the Lateran Council claims no place in those churches in which ecclesiastical benefices are by no means distinct, but rather in those in which there is a fixed number of canons and distinct prebends. Furthermore, if according to the tenor of the council the aforesaid canons were found negligent, nevertheless the bishop, who had been negligent

for a longer time, acquired no right from this. He should deservedly be punished for it, since no one ought to merit both penalty and reward from the same act. Indeed, in this case the power of electing had deservedly devolved upon the superior, as is manifestly inferred from the tenor of the council, and therefore the bishop ought not to have put his sickle into another's harvest.

When these and other matters had been proposed before you, but you wished to deliberate concerning the sentence to be rendered, because you found councils that were excessively diverse, and almost everyone whose counsel you wished to use in this matter was for some reason held suspect by one or the other party, you remitted the instructed cause to our presence, transmitting under your seal the attestations and allegations of each party.]

We, having diligently inspected the attestations and arguments of each party, by the counsel of our brothers command your fraternity by authority of the present writings that, concerning the first article of the bishop's petition—in which he petitioned you to prohibit the aforesaid canons from the injury which they inflicted upon him concerning the election of canons of the church of Volterra—you are not to delay, appeal being set aside, absolving the often-mentioned canons from the claim of the bishop himself. For, as the rule of law says, one who uses his own right does not appear to inflict an injury, since it was proved by far better witnesses that the aforesaid canons used this right before the aforesaid bishop did.

Concerning the second article of the aforesaid petition, in which the same bishop sought that the said canons permit him freely to use the right of election, you are likewise to take care to absolve the often-mentioned canons, especially if it is notorious that the general custom observed in Tuscany is that, in cathedral churches, the chapter alone, without consulting the bishop, has the faculty of electing canons. [But lest, etc. Given at the Lateran, on the sixteenth day before the Kalends of November, in the ninth year, 1206.]

Chapter XXXII

Latin source headnote: Those making a compromise are bound to receive the person elected by the compromissaries if he is worthy, unless he appears to have been elected contrary to the form of the compromise.

The same to the Abbot of Saint Victor, the Dean of Paris, and Master R. Decortonensis, canon of Thérouanne.

When our beloved son the Archdeacon of Thérouanne had intimated to us (And below:) that, the church of Thérouanne being destitute of the consolation of a bishop, the canons of the same church, deliberating concerning the substitution of a pastor, unanimously conferred upon three canons of Thérouanne the power of electing a bishop. With an oath interposed, they promised to receive as pastor the man whom those three should consider should be elected bishop from the body of that church. Afterward, having examined the wishes of each person, those three elected as bishop John, archdeacon of the same church, a learned, provident, and discreet man.

The metropolitan also diligently examined both the election and the person of the elect and solicitously inquired into the truth concerning his age, about a deficiency in which certain persons had doubted. Declaring by sentence that the elect himself suffered no deficiency in age, he solemnly confirmed the election made of him as canonically celebrated.

Afterward, having received the regalia from the king, at the petition of the same chapter he was ordained priest by our venerable brother the Bishop of Arras at the command of the aforesaid metropolitan. For some time, with no one contradicting, he obtained free and peaceful administration of the church of Thérouanne in both spiritual and temporal matters.

Hence those proctors humbly petitioned us that we impose silence upon those who, after all these things and stirred by the goads of envy, presume rashly to come against their own act and raise material for discord against the elect himself; that we approve the aforesaid election, celebrated so concordantly and solemnly confirmed; and that we cause the gift of consecration to be bestowed upon the elect himself. Concerning this, letters were presented to us not only from many abbots and chapters of the city and diocese of Thérouanne, but also from other priests, who bore testimony concerning all the foregoing matters and commended the elect himself to us in many ways for learning, discretion, and honorable conduct.

Indeed, they also offered us letters of the electors themselves concerning this, within which was inserted word for word—as the same electors assert—the tenor of those letters that had been drawn up in chapter concerning the power delivered to them according to the aforesaid form and sealed with the seal of the chapter.

But the aforesaid B., who had come against the aforesaid elect, proposed to the contrary that the power of electing had been conceded to the aforesaid three, after an oath had been furnished, under this form: that the chapter would be bound to receive the man whom those three elected as pastor after he had been nominated from the body of that church by all or by the greater and sounder part. The electors themselves, not observing the limits of the power delivered to them, presumed to elect the aforesaid archdeacon, whom few of the chapter had nominated.

Hence the canons of Thérouanne, afterward wondering how the aforesaid archdeacon had been elected when there were several worthier persons in the same church, began, as they spoke with one another concerning the course of the election, almost all publicly to profess that they had in no way nominated the aforesaid archdeacon. Judging that they had been deceived in this matter, they took care through the same B., to whom they assigned their testimonial letters, to disclose to our apostolate what had been done concerning this.

He solicitously petitioned before us that, after quashing the same election, we cause canonical provision to be made for that church from a suitable person, since, as he asserted, truly all the canons of Thérouanne were prepared to affirm by a furnished oath that they had never nominated the aforesaid archdeacon as bishop. It could lawfully be shown that authority to elect had been conferred upon the aforesaid three according to the aforesaid form: namely, that they should elect from the body of the church the person upon whom all or the greater and sounder part of the chapter agreed. The same B. asserted that he would likewise prove that the often-mentioned elect suffered a deficiency in age.

We, however, considering that it would be a matter pernicious as an example if anyone should ascend to the summit of dignity through the cunning of subreption, considered by the counsel of our brothers that provision should be made in this manner. After the objectors have furnished an oath that they are not maliciously bringing a question of this kind against the aforesaid elect, the aforesaid

three electors are to be bound by the bond of an oath to tell the truth concerning how many of the canons agreed upon the aforesaid archdeacon at the time of the examination.

If all three together, or at least two of them, say under oath that the greater part of the canons agreed upon the archdeacon himself, you are to impose silence upon the objectors, since their proof against this would be insufficient because they would each be singular in their testimonies.

But if it is established through their depositions that the often-mentioned archdeacon was nominated by the fewer, you are then at last solicitously to hear whatever each party proposes to prove the form according to which the power of electing is asserted to have been conceded to the aforesaid three electors. If it is sufficiently shown that, according to the form delivered to them, they ought to have elected from the body of the church the man upon whom all or the greater and sounder part of the chapter agreed, you are entirely to quash the election of the archdeacon himself and cause provision of a suitable person as bishop to be made for the church of Thérouanne through canonical election.

Otherwise, holding ratified what was done concerning him, you are, appeal being set aside, to restrain the objectors from their claim against him through ecclesiastical censure. You are to despoil the aforesaid B. of his prebend in the church of Thérouanne, since he bound himself to this penalty if perhaps he failed in his proof. Nor is the objection made against the elect concerning deficiency of age to prevent this, since the same canon did not greatly insist upon this objection and judgment concerning it was rendered by the metropolitan. His sentence passed into a matter adjudged because it was not suspended by a lawful appeal within ten days. [But if not all, etc. Given at the Lateran, on the fourth day before the Nones of April, in the eleventh year, 1208.]

Chapter XXXIII

Latin source headnote: If, out of seven compromissaries, three elect a fourth, and he consents and is suitable, the election will be confirmed.

The same to the Bishop of Bayeux.

Since you are learned in the law and have an abundance of learned men, we cannot but wonder that you wished to consult us concerning certain articles of law which are known to contain no doubt or very little doubt.

The first article of your consultation contained that, when the dean of a certain church had died, the chapter of the same place submitted the matter by compromise to seven of its canons under this form: that the chapter itself would receive as dean the man whom all of them equally or the greater part of them nominated from among themselves or from others of the body of that church. Hence, when one of those seven was nominated as dean by three of them and another, who was not of their number, was nominated by three others, you asked which of them ought to be assumed by the chapter as dean.

Concerning this we answer you as follows: the man who is known to have been nominated by three of them from the number of the seven ought, according to the tenor of the compromise, to be assumed as dean, provided that he consents to the election made of him and no canonical impediment obstructs him. Furthermore, etc. (Cf. c. 31, On the Office of a Delegated Judge, I.29.) [Given at the Lateran, on the tenth day before the Kalends of December, in the eleventh year of our pontificate, 1208.]

Chapter XXXIV

Latin source headnote: The election of the emperor belongs to the German princes—three prelates and four laymen—and an election made by the greater part of them, the others not having been contemned, is valid. It belongs to the Pope to examine and approve the elect and, if he is worthy, to anoint, consecrate, and crown him; or, if he is unworthy, to reject him, as because he is sacrilegious, excommunicated, a tyrant, a fool and heretic, a pagan, a perjurer, or a persecutor of the Church. And when the electors are unwilling to elect, the Pope supplies their default. And when the votes of those electing are equal and no greater concord follows, the Pope can show favor to whom he wills. This is what this text notably says.

The same to the Duke of Carinthia.

We benignly received our venerable brother the Archbishop of Salzburg, our beloved son the Abbot of Salem, and the nobleman the Margrave of Austria, who were sent to the Apostolic See as messengers of certain princes, and considered that a benevolent hearing should be granted to them. We also caused the letters which certain noble princes sent through them to be diligently read through, and we noted everything contained in them.

Among other matters, certain princes especially employed this objection, saying that our venerable brother the Bishop of Palestrina, legate of the Apostolic See, acted either in the person of an elector or of a judge. If of an elector, he had put his sickle into another's harvest and, intruding himself into the election, derogated from the dignity of the princes. If of a judge, he appeared to have proceeded wrongly while one of the parties was absent, since it had not been cited and therefore ought not to have been adjudged contumacious.

But we, who according to the office of apostolic service are debtors to each person in justice, just as we are unwilling that our justice be usurped by others, so are we unwilling to claim for ourselves the right of the princes. As we ought, we recognize in those princes the right and power of electing the king who is afterward to be promoted as emperor, to whom it is known to belong by law and ancient custom, especially since a right and power of this kind came to them from the Apostolic See, which transferred the Roman Empire in the person of the magnificent Charles from the Greeks to the Germans.

But the princes also ought to recognize—and certainly do recognize, as they themselves acknowledged in our presence—that the right and authority of examining the person elected as king and to be promoted to the empire belongs to us, who anoint, consecrate, and crown him. For it is regularly and generally observed that examination of a person belongs to the one to whom imposition of the hand pertains.

For if the princes, not only in discord but even in concord, elected as king any sacrilegious or excommunicated man, a tyrant or a fool, a heretic, or a pagan, ought we to anoint, consecrate, and crown a man of this kind? Entirely far from it.

Therefore, answering the objection of the princes, we assert that our legate the Bishop of Palestrina, by approving our dearest son in Christ King Otto and rejecting Philip, Duke of Swabia, acted neither in the person of an elector—as certain princes objected to us through their letters—inasmuch as he neither caused anyone to be elected nor himself elected, and thus in no way intruded himself into the election; nor did he present the person of a judge, since he considered that the election of neither

man, with respect to the act of those electing, should be confirmed or invalidated. Thus he in no way usurped the right of the princes for himself or acted against it.

Rather, he exercised the office of a denouncer, because he denounced the person of that duke as unworthy and the person of the king as suitable for obtaining the empire, not so much because of the partisanship of those electing as because of the merits of the elected persons. Nevertheless, more of those who by law and custom possess the power of electing the king to be promoted as emperor are reported to have assented to King Otto himself. And from the fact that the supporters of Duke Philip presumed to elect him while the others were absent and contemned, it is evident that they proceeded wrongly, since it is a rule of manifest law that the contempt of one person obstructs an election more than the contradiction of many.

Hence, because those who abused the power permitted to them merited losing their privilege, it can not undeservedly appear that, notwithstanding an injury of this kind, the others could use their own right. And because the aforesaid duke received the crown and anointing neither where he ought nor from whom he ought, whereas the aforesaid king received both where he ought—namely, at Aachen—and from whom he ought—namely, from our venerable brother the Archbishop of Cologne—we, as justice requires, regard and name not the duke but the other man as king.

In the rejection of the aforesaid Philip, Duke of Swabia, because of the manifest impediments of his person, there was need not of accusation but rather of condemnation, because manifest matters require not accusation but condemnation.

That, when the votes of the princes are divided in an election, after admonition and waiting we can favor one of the parties—especially after anointing, consecration, and coronation are sought from us, as each party has sought them from us many times—is evident equally from law and example. For if the princes, after being admonished and awaited, either could not or would not agree upon one purpose, shall the Apostolic See lack an advocate and defender, and shall their fault redound to its punishment?

The princes know, and your nobility is not ignorant, that, when Lothair and Conrad had been elected in discord, the Roman Pontiff crowned Lothair, and the crowned man obtained the empire, with Conrad only then returning to his favor.

We therefore considered that they should be admonished that, just as we refrain from injury to their right, so should they in no way show themselves injurious to our right. Rather, they should withdraw from the aforesaid duke, rejected by us in a just judgment, and should not refuse to adhere to the aforesaid King Otto, unless at last something lawful should be objected and shown by them against his person or the act.

(And below:) For the impediments of the Duke of Swabia are notorious: namely, public excommunication, manifest perjury, and the widely known persecution which his progenitors and he presumed to exercise against the Apostolic See and other churches.

He was also, because of the invasion and devastation of the patrimony of Blessed Peter, with admonition often first given, publicly and solemnly bound by the bond of excommunication by Pope Celestine of good memory, our predecessor, while he was dwelling in Tuscany. He afterward acknowledged this when through his messenger he sought the benefit of absolution from our same

predecessor. Later, after his election, he caused himself to be absolved secretly at Worms by the then Bishop of Sutri, whom we had sent into Germany with the Abbot of Saint Anastasius for the liberation of our venerable brother the Archbishop of Salerno, contrary to the form of our mandate and merely in fact, since in law he could not be absolved. Hence it is evident that he was elected while excommunicated.

It appears not undeservedly that he is still bound for the same cause by the sentence of excommunication, since the aforesaid bishop could not absolve him by his own authority, while by the authority of our delegation he could do no more, nor was he permitted to act otherwise, than had been conceded to him by the Apostolic See.

He is also manifestly believed to lie under the sentence of excommunication from this: the perfidious Markward, enemy of God and the Church, together with all his supporters, both German and Latin, is bound by the bonds of a publicly proclaimed excommunication for the merits of his iniquity. As we remember intimating to you through our letters directed through P., judge of Piacenza and the messenger of Philip himself—which we believe reached Philip's hearing—nevertheless, although this came to his knowledge not only from the report of the judge himself but also through public rumor, he not only communicates with the same excommunicated man but supports him in his malice and, through his messengers and letters, sharpens his fury so that our dearest son in Christ Frederick, illustrious King of Sicily, his nephew, whom he has already deprived of his paternal inheritance, may still be deprived of his maternal possession.

Contrary to his own oath, concerning which he did not seek counsel from the Apostolic See, the same man also presumed through the vice of ambition to usurp the kingdom for himself, rather than elect another as king because of necessity—which would have appeared somewhat more tolerable—although the Roman Church, in which by divine institution the plenitude of power resides, ought first to have been consulted concerning that oath, just as certain persons prudently consulted it.

Nor does it avail for his full excuse if that oath is said to have been unlawful, since he ought nevertheless to have consulted us concerning it before acting against it by his own temerity. This is especially so from the example that, although the Gibeonites obtained an oath from the children of Israel through fraud, nevertheless, after the fraud became known, the Israelites were unwilling rashly to act against it. No one of sound mind is ignorant that whether the said oath was lawful or unlawful, and therefore whether it had to be observed or not observed, belongs to our judgment.

We do not believe that the princes doubt that Philip is descended from a family of persecutors. Henry, who first received the empire from this family, presumed to capture Pope Paschal of good memory, our predecessor, together with bishops, cardinals, and many nobles of the Romans. Frederick, the father of Philip, for a long time fostered a schism against Pope Alexander of happy memory, our predecessor. You know sufficiently how Henry, Philip's brother, conducted himself toward the killers of Albert, Bishop of Liège of sacred memory, whom he had first compelled to go into exile, and how Conrad, who had captured the aforesaid Bishop of Ostia, conducted himself.

We believe it has reached your hearing and that of the other princes how that same Conrad caused our venerable brother the Bishop of Osimo to be struck with slaps, the hairs of his beard to be torn out, and him to be treated dishonorably in many ways; how he also caused certain familiars of the Roman Church to be mutilated in the nose; how he imprisoned the aforesaid Archbishop of Salerno;

and how he caused certain ecclesiastical men to be roasted by flames and certain other men to be submerged in the sea.

Moreover, if the aforesaid duke—which God forbid—obtained the empire, the liberty of the princes in election would perish, and confidence of obtaining the empire would thereafter be taken from the others. For if, just as formerly the brother of the said duke succeeded their father, so the duke himself succeeded his brother, the empire would appear to be owed not by election but by succession. It would redound to the prejudice of the princes if it appeared that no one should be assumed to the empire except from the household of the aforesaid duke.

Therefore, since we can by no occasion whatsoever be deflected from our purpose but rather persist in it most steadfastly, and since you have often considered that it should be suggested to us through your letters that we should in no way favor the same duke, admonishing your nobility, we command by apostolic writings that, just as you trust in our favor and we hope in your devotion, you withdraw entirely hereafter from the aforesaid Duke Philip, notwithstanding an oath, if any, which you made to him by reason of the kingdom, since, he having been rejected with respect to obtaining the empire, an oath of this kind ought not to be observed.

But you are openly and powerfully to adhere to the aforesaid King Otto, whom, with the Lord granting, we propose to summon to the imperial crown, so that, when you have adhered to him at our admonition, you may especially merit obtaining his favor and benevolence among the first. For this, out of love for your nobility, we shall employ effective effort. [Given at the Lateran.]

Chapter XXXV

Latin source headnote: Those absent within the province are to be summoned to the election, and the election of the greater and sounder part is confirmed.

The same.

Before our beloved son, the cardinal-priest of the title of Saint Pudentiana (And below:) But if the election of each party has been quashed, you are, after summoning all the brothers who shall be in the province, to cause what you see to please the greater and sounder part of them concerning the aforesaid matters to be firmly observed through ecclesiastical censure.

Chapter XXXVI

Latin source headnote: An election made by the greater part is quashed when the lesser part has been contemned, even if it consists of one person alone; nevertheless, the right of electing does not devolve upon the lesser part. This is what it says according to the common understanding.

The same to the Bishop of Parma and his fellow judges.

When S., Bishop of Cremona of good memory, was at the point of death and his recovery was despaired of, the chapter of Cremona caused H., its canon who was applying himself to scholastic studies at Reggio, to be cited for a fixed term on the vigil of Pentecost for the election of a future bishop.

But on the second weekday after Pentecost, when the said bishop had entered upon the way of all flesh, the chapter, before his body had been delivered for burial and while the aforesaid canon was

absent, conferred the power of electing a bishop upon four men from the chapter itself and three from the clergy of the city, with the express condition that the lesser part of those seven should follow the greater part in the election.

Accordingly, when deliberation concerning the election of a future pastor had been held after the death but nevertheless before the burial of the bishop himself, and their votes divided into parts—with four assenting to the archpriest, two to the archdeacon, and one to another man—at last, after he had been buried and the judgment of the lesser part acceded to that of the greater, they concordantly elected the same archpriest. The archdeacon assented to this election with the chapter and clergy of the city, no one contradicting.

But Hu., arriving afterward and asserting that he had been contemned and that an election of this kind was therefore of no moment, as though the right of electing had devolved upon him, elected the aforesaid archdeacon by himself as best he could.

When the said H. was constituted before us on behalf of his election and our beloved son I. on behalf of the election of the archpriest, we considered that the election presumed by H. after the election of the archpriest had not been quashed should be invalidated. Although it concerned a man of great learning, honorable life, and illustrious reputation, it had nevertheless been presumed with no little temerity, since H. ought to have awaited our judgment concerning the first election before proceeding to a second. As a penalty we prohibited him from having a voice of contradiction while the chapter persisted in its first assent.

But, as justice required, we quashed the election of the archpriest, although praiseworthy testimony was given concerning him: both because they held deliberation concerning the election itself, contrary to the canonical sanctions, while the body of the said bishop had not yet been delivered for burial, and because H. was found to have been contemned, although he was one person alone, since in such matters the contempt of one is customarily more prejudicial than the contradiction of many—as in the present case.

Nor ought the aforesaid citation to be said to have been valid, because, since it preceded the death of the bishop, it was excessively rash and therefore could not bind the person cited.

Moreover, wishing to provide for the church of Cremona with special solicitude, we grant and command that, if the chapter wishes to persist in its assent, you concede the archpriest himself by our authority as pastor to the church of Cremona. Otherwise, unless within eight days they provide for themselves and their church with a suitable person as bishop through a canonical and concordant election, you are by authority of the Apostolic See to take care to provide for them from the same archpriest or the archdeacon or another suitable man.

Chapter XXXVII

Latin source headnote: One who is not a monk cannot be elected as a regular prelate.

The same.

When it recently came to our knowledge that H., who conducted himself as Abbot of Lisieux, had not been a monk before he was elected, we, considering that this had been attempted contrary to the

regular traditions—since one ought to become a monk while having no hope or promise that he will be made abbot—took care, with the assent of our brothers, to invalidate the election made of him.

Wherefore we command your fraternity by apostolic writings that you take care more strictly to prohibit on our behalf both the monks and the other faithful of the aforesaid monastery from daring to exhibit any obedience or reverence to the aforesaid H. by reason of the aforesaid election. If by making dispositions he has already wrongly attempted anything in the same monastery, we will that it have the force of no validity but be entirely invalidated. [But if contrary to this, etc. Given at the Lateran, on the third day before the Ides of January, 1199.]

Chapter XXXVIII

Latin source headnote: No one can be elected abbot unless he has been instructed in the monastic rule.

The same to Master C., cardinal-priest and legate of the Apostolic See.

You pursue the praiseworthy action of your office when you petition to be instructed by us concerning those matters about which you are in doubt.

Indeed, you intimated to us through your letters that, when a certain monastery suitably enriched with possessions but situated in the midst of a nation equally wicked and perverse lacked a pastor, the monks, deliberating concerning the election of an abbot, considered it necessary to elect some person through whose power they could be liberated from their persecutors. When they could not find a suitable person of their own order, they directed their eyes toward a certain nobleman through whom they could be better defended. At the counsel of certain men learned in the law, they approached his father, humbly petitioning that he induce his son to assume the monastic habit, giving the father no assurance concerning his promotion.

The father induced his son to do this. The son was provident and discreet, learned, and twenty-five years of age. He became a monk, no hope of elevation having been given to him, as he asserts; but on the day on which he became a monk, he was elected abbot. His election was confirmed by our beloved son G. de Lab., our subdeacon, rector of Messina, and legate of the Apostolic See, who was present for all the aforesaid matters.

Since the same man is prepared to purge himself of having been induced to this by any ambition, you petition through our letters to be instructed whether the said legate was able to confirm an election of this kind or to grant a dispensation, whether what was done can stand, and whether, after the election has been duly quashed, he can again be elected abbot.

We answer your consultation in this manner: since from the things which immediately followed it is shown that such a person cannot be elected abbot in such a manner, especially because he wished to be a master before he was a disciple, we have decreed that the election is invalid and void.

But after he has been competently instructed in the rule, if the urgent necessity and evident utility of the monastery itself demand it, after his purgation has been received he can be assumed as abbot, lest the monastery be oppressed by the incursions of the wicked. [Secondly, etc.—Cf. c. 11, On Testaments, III.26.]

Chapter XXXIX

Latin source headnote: An election otherwise canonical is confirmed although certain of those electing were bound by a minor excommunication.

The same.

That daily pressure—[namely, the care of all the churches which surrounds the ministry of apostolic service—especially induces us to attend solicitously to their consolation and benignly to pursue their just desires with swift effect when they are destitute of the consolation of pastors, lest for want of a pastor they sustain loss in spiritual and temporal matters and the Lord's flock be left to the bites of wolves if there is no one to keep the watches of the night over it.

Indeed, when our venerable brother Albert, your archbishop, then elect, approached our presence, wishing with paternal solicitude to take counsel for the church of Magdeburg as for a special daughter—which has always shown itself devoted to its mother, the sacrosanct Roman Church, not only in prosperity but also in adversity—we had already some time ago diligently heard and understood what our beloved sons [name omitted], Provost of Saint Sebastian; [name omitted], Provost of Saint Mary; [name omitted], Provost of Mildensee; C. and C., canons of the greater church; Master Gernandus, canon of Saint Nicholas; and Litulfus, canon of Saint Peter of Magdeburg, had solicitously proposed before us both orally and in writing.]

Because we learned for certain that the election made of him had been canonical, we considered that it should be confirmed by apostolic authority, supplying from the plenitude of power any defect that might have existed in it from the fact that certain persons participated in his election who, merely through participation, had fallen into the snare of a simple excommunication, [as, etc. Given at Rome at Saint Peter's, on the sixth day before the Ides of February, in the ninth year, 1207.]

Chapter XL

Latin source headnote: If a postulation concurs with an election, and the number of those postulating is twice greater, and the person postulated is suitable, the postulation is admitted and the election rejected. But if the person postulated is unworthy and the greater part of those postulating were ignorant of this, the postulation and the election are rejected. But if they knew it and the elect is suitable, the election is confirmed; and likewise if the number of those postulating is not twice greater. This is what it says, understood according to what the common law contains.

Likewise to Master Maximus, our notary.

It is written in the Apocalypse of John that in the midst of the throne and around the throne were four living creatures, [full of eyes before and behind. The first living creature was like a lion; the second living creature was like a calf; the third living creature had a face as if of a man; and the fourth living creature was like a flying eagle. And the four living creatures, each of them, had six wings.

This throne is understood to be the Roman Church, which by customary expression is called the Apostolic See—certainly the throne of the Lamb, the throne of the one living forever and ever. In its midst, as if daughters in its bosom, reside, and around it, as if handmaids in service, stand the four patriarchal churches—Alexandria, Antioch, Jerusalem, and Constantinople—which are designated by those four living creatures.

For Mark founded and governed the church of Alexandria. According to the vision of Ezekiel, he is understood through the lion because he began his Gospel from a roar, saying, "The voice of one crying in the desert"; and because, just as the lion is said after the third day to awaken its cub by its roar, so God the Father, by the power of his divinity, after three days raised his Son from the dead. That Son is described as the lion of the tribe of Judah, and Mark principally treats of his resurrection. Hence, on the day of the Lord's Resurrection, his Gospel is read in the Church by preeminence.

Luke, however, was Antiochene by nation. For that reason he is described in the figure of a calf, in which the priestly offering is designated, because, beginning his Gospel from the priesthood, he treated especially of the sacrifice of the supreme and true priest, who is the saving offering—namely, the fatted calf which the father ordered to be killed for the returning prodigal son. Hence the church of Antioch is well designated through him, for in it the Prince of the Apostles was first elevated by the faithful to the chair of the supreme priesthood.

Matthew indeed was Jewish by nation, and he first wrote the Gospel, even in Hebrew, in Judaea. For this reason he is designated through the likeness of a man, because, beginning his Gospel from the incarnation of Christ, he principally shows his human birth. Christ himself, assuming that birth for us from the Jews and in Judaea, consecrated the church of Jerusalem, the metropolis of the Jews, by his human presence. Concerning it, it had been said through the Prophet: "A man was made in her, and the Most High himself founded her."

John, however, founded the church of Asia, and he himself wrote the Apocalypse to the seven churches which are in Asia. The church of Constantinople, which at length merited to be preferred and set over these and the other churches of the Greeks, is deservedly designated through the eagle. For just as the eagle excels all birds in flight and the ray of the sun does not offend the gaze of its eyes, so John, leaving the other three living creatures upon the earth and ascending above the heavens of the heavens, beheld the true light with unstruck eyes and began his Gospel from the divine birth of the Word. Although he was last in time among all the Evangelists, he was nevertheless foremost in dignity, because, reclining above the breast of Christ at the supper, he drank the streams of doctrine from the very fountain of the Lord's sacred breast.

Thus the church of Constantinople, although later in time, was afterward, because of the honor of the most pious Constantine, elevated above the others in dignity. Thus the first were made last and the last first, so that it is deservedly said to her: "Many daughters have gathered riches, but you alone have surpassed them all."

For the governance of that church, such a pontiff is to be assumed as, in the likeness of those four living creatures, is full of eyes before and behind, so that with full light he may contemplate the mysteries of the Old and New Testaments, seeing past things through experience and foreseeing future things through caution. He ought also to have six wings—namely, knowledge of the six laws: natural, Mosaic, prophetic, evangelical, apostolic, and canonical. Flying between heaven and earth with perfect balance by these wings, he may fly from earthly to heavenly things and from temporal to eternal things.]

Indeed, to this church—namely, Constantinople—two [certain] living creatures have been called, would that they were full of eyes and had six wings: namely, our venerable brother the Archbishop of

Heraclea and our beloved son the parish priest of Saint Paul in Venice, as was proposed before us through the proctors both of those postulating the archbishop and of those electing the parish priest.

[The proctors of those electing the parish priest proposed that, when the church of Constantinople was vacant, the canons of that church elected Ph., their dean, as their pastor. We quashed that election because it had been celebrated while certain persons who ought to have been present were excluded. Lest the care of a pastor long be wanting to the flock of the faithful, both the canons and certain others who said that they possessed a right in the election of the Patriarch of Constantinople assembled together to deliberate concerning an election.

When seven persons offered themselves on behalf of seven provosts, and certain others intruded themselves into deliberation concerning the election on behalf of the other prelates, after much contention they received both those seven persons and two others at the insistence of the whole body —those two, however, were to have only two votes—with their right in all respects saved both for the present and for the future, for the good of concord.

But it happened, when the enemy of the human race, who strives to rend the unity of the Church, oversowed tares in the Lord's harvest, that the votes divided into two parts. Nine of the canons and nine of the other aforesaid persons postulated the aforesaid archbishop; while fifteen canons and the Provost of the Holy Apostles elected the aforesaid parish priest. The cantor, who was absent for the utility of the church and before deliberation concerning the election had expressed through his letters his assent concerning the parish priest if he pleased the others, and eight other canons who were not present at the time of the election, furnished their assent. Thus the votes of twenty-four canons and one provost agreed upon the aforesaid parish priest.

They therefore said that the number of those postulating was smaller, since only eighteen postulated the archbishop. They endeavored to exclude certain of those whom they had admitted with the aforesaid reservation of their right—namely, the two Provosts of Blachernae and Boukoleon—because, since through a privilege of exemption obtained from the Apostolic See they had withdrawn themselves from the burden, they appeared tacitly to have renounced the honor, so that they did not pertain to the election of one to whom, once elected, they would in no way be subject.

Four others were not provosts but clerics of other churches who intruded themselves into deliberation concerning the election in the name of their provosts, because their lords were absent to such an extent that they neither could nor ought conveniently to be summoned to deliberation concerning the election. For if absent persons could be present through proctors, the rights of absent persons would scarcely ever devolve upon those present, since it would rarely happen that they could not participate either by themselves or through others.

The seventh, who had been present, had already been elected and confirmed as Archbishop of Verria and, having been transferred to his church, had obtained bodily possession of it.

Although the whole body of clerics had earlier petitioned that four persons be admitted on its behalf, nevertheless, because the party of the canons was unwilling to admit so many, lest the number of the others grow excessively, it was finally ordained for the good of peace that only two of them be admitted with the aforesaid reservation. Therefore, those electing asserted that the two had only two votes and not those of the others, especially since thirty provostships had been reduced to seven, although that reduction had not yet been approved by the authority of their judge.

They denied that there were at that time more than five or six conventual churches; and, if there had been more, they said nevertheless that their prelates were not present at the time of the aforesaid election.

Finally, they sought to convict those postulating of bad zeal because, as they proposed, the latter had knowingly postulated an illiterate and unchaste man. They said that his incontinence could be proved through a son begotten during his monastic life as a witness of his father's lust.

They also marked the same archbishop with ambition because, on the vigil of the Lord's Nativity, he withdrew himself from his church and was in the imperial city where the postulation was then to be celebrated, and he suffered himself, with the hymn "We Praise You, God," to be placed in the throne in which the patriarch was accustomed to sit on ordinary days.

Also, distributing by his own authority the goods of the patriarchate after the death of the patriarch, he violently seized its seal from the chamberlain's chest and sent to Ravenna certain letters upon which he impressed it. By the authority of those letters he caused a certain sum of money deposited there to be brought to him and distributed it according to the decision of his own will, to the prejudice and burden of the church of Constantinople. All this and other matters were proposed in the chapter when certain persons deliberated concerning postulating him.

Hence they petitioned that, since the party postulating the archbishop was smaller in number, inferior in zeal, and had fallen from its right by knowingly postulating an unworthy man, we deign to confirm the election canonically made of the said parish priest. This was especially so because they themselves had used the common law by electing an electable person, which belongs to ordinary law, while the others, despising the benefit of the common law, had flown to an extraordinary remedy.

To these matters the proctors of the other party answered that all the prelates of the conventual churches existing at Constantinople possess a right in the election of the Patriarch of Constantinople through our constitution. Hence, the whole body of prelates, for which express provision is made in that constitution, ought not to be restricted to seven, since by reason of their dignity good provision was made in this matter for the aforesaid church: both so that a sounder deliberation concerning the election might be held, since a judgment confirmed by the opinions of many is complete; and also so that, through the number of prelates, resistance might be offered to those who wished to possess God's sanctuary by hereditary right.

They also added that the two exempt provosts in no way lost the benefit of the aforesaid constitution through the privilege of exemption, since those things which are introduced in someone's favor ought not to redound to his injury, and through the privileges of the Roman Pontiffs additions, not subtractions, are customarily made for those to whom they are specially granted. This was especially so for the aforesaid reason: that they should prudently resist those who strive to usurp the Lord's sanctuary as a hereditary right.

Hence the same provosts could not and ought not to be excluded, also for the reason that seven persons in the name of the seven provosts, and two in the place and name of twenty-three prelates for the whole body itself, were admitted by the canons to deliberation concerning the election. Thus, since the votes of seven provosts and eighteen prelates present, together with those of six others absent whose proctors were present in the city, concurred upon the person postulated through their assent, they alleged a number more than twice greater for their party. For only fifteen canons and one

provost had assented to the parish priest at the beginning, and no right accrued to him in this case through the subsequent assent of nine canons who were not present at the time of the election and who neither could nor ought conveniently to have been summoned. This was especially so since eight of them had been absent for so long that, according to the constitution of the patriarch and chapter of Constantinople, they would in no way be held as canons.

They also introduced authority on their behalf, since regularly a prelate is held to have greater authority than a simple canon.

They proved good zeal for the reason that they had postulated a Venetian who, through long association, was known for avoiding scandal, proved in praiseworthy administration, dear to clerics, and acceptable to laymen. The assent of the prince, the votes of the suffragans, and the desire of the people concurred upon him. They ought not to presume anything sinister concerning one whom both the excellence of his dignity and common reputation rendered illustrious.

Nor ought the adversaries, who were silent at the time of his promotion, to be heard unless perhaps they proposed something new or something they had learned afterward. This was especially so because the subsequent honorable conduct of a long period had erased the alleged stain of incontinence, if any perhaps had preceded in him, which they nevertheless wholly denied.

They also proposed that, unless the other party restrained itself from injuries, they intended to propose certain matters against both the persons of those electing and the elect.

For the excuse of the same archbishop concerning the objection of ambition, they proposed that he had come to Constantinople for an honorable and probable cause and had need to approach it frequently, both because of the affairs of the patriarchal church and because of execution of the last will of the deceased patriarch committed to his discretion. Although he participated in vespers and matins in the patriarchal church because of the solemnity of the day, he nevertheless sat in the place of the dean and usurped nothing of the patriarchal things.

They also said that he was learned, although not eminently, nevertheless competently, having sufficient understanding and eloquence concerning the scriptures and in the scriptures.

They alleged nevertheless that, even if certain conventual churches were then vacant or perhaps did not have a number of clerics because of poverty, the chapter itself, or even one person who held the place of the chapter, ought to be admitted to the election in place of the prelate, since in such matters the chapter is often accustomed to supply the place of the prelate, and the name and right of a corporate body often devolve upon one person and are retained in one.

Those electing the parish priest were likewise accused of bad zeal because they had elected a man whom, at the time of the election, they believed to have been constituted in minor orders. They asserted that on the vigil of the Lord's Nativity the other party at Constantinople had assented to the parish priest, who a little earlier had caused himself to be promoted to the subdiaconate at Venice.

From this it was inferred that, if this had been done by agreement, it could not lack ambition. But if it had not been prearranged, since because of the distance between the places this could not have reached those electing in so short a time, it followed that according to their own consciences they were electing an ineligible person. Or, if error—not free from accusation—were alleged as an excuse, negligence would come into the confession, which in these matters does not differ greatly from fault.

They added that it was more extraordinary to assent to a man constituted not only outside the entire patriarchate but even outside the entire empire than to a neighbor and familiar person, a suffragan of the same church concerning whose pastor's election deliberation was being held.

They also marked the person of the parish priest with vehement ambition, saying that through his letters he had expressly asked certain canons of Constantinople to elect him as their patriarch, which the opposing party denied.

Hence those postulating the often-mentioned archbishop petitioned that, since the other party was lesser in zeal, authority, and number, after quashing what had been done concerning the parish priest, we deign to admit their postulation.]

But because full proof could not be made to us concerning the matters brought into judgment through the assertions of the parties—although concerning what was said about the number of those postulating, through a certain public instrument and also through the confession of the proctor of the opposing party, indeed made in court but afterward revoked, the other party asserted that its contention was founded—we considered that the cause should be committed to your discretion.

We command by apostolic writings that you inquire most diligently into the truth concerning these and other matters: at Venice, concerning the merits of the elect and of the person postulated, where they were born and lived for a long time; and at Constantinople, concerning the zeal of those electing and those postulating, and generally concerning everything which can instruct the cause, where a postulation and election of this kind were celebrated.

If the parties assent, you are to proceed in this manner. If it is established that it was agreed by mutual assent that seven provosts should be admitted to the election of the patriarch, whether by themselves or through others, and two others on behalf of the whole body for the other prelates of the conventual churches; and that so many conventual churches then had prelates that, together with the seven provosts and the nine canons who are known to have agreed upon the postulation of the aforesaid archbishop, they would make a number twice greater than the sixteen electors of the parish priest, you are in our place to admit the postulation—unless it is proved that something from the canonical institutes obstructs the person postulated which ought to impede his promotion. After quashing the election of the parish priest, you are to absolve the archbishop himself from the bond by which he is bound to the church of Heraclea and grant him as pastor to the church of Constantinople.

But if all the aforesaid persons together were by no means sufficient to make a number twice greater, whether the person postulated was worthy or unworthy, after rejecting the postulation you are by our authority to confirm the election of the parish priest, provided that nothing obstructs him which renders him unworthy of so great a prelacy.

But if the number of those postulating is found to have been twice greater, as aforesaid, and the person postulated is found unworthy, you are not to delay rejecting both the postulation and the election, unless perhaps all or the greater part of those postulating, with damnable presumption, knowingly postulated an unworthy person, so that on this occasion they ought deservedly to be deprived of the power of electing or postulating. In this case also, you are to confirm the election if it is established that it was celebrated concerning a suitable person. [Moreover, etc. Given at Segni, on the fifteenth day before the Kalends of September, in the fifteenth year of our pontificate, 1212.]

Chapter XLI

Latin source headnote: If those to whom the election belongs neglect to elect the prelate of a cathedral or regular church within three months, the nearest superior will order the church; but if he does not do so within another three months, he will be canonically punished.

The same in the general council.

Lest for lack of a pastor the rapacious wolf invade the Lord's flock, or a widowed church suffer grave loss in its property, wishing in this also to meet dangers to souls and to provide against loss to churches, we establish that a cathedral or regular church shall not lack a prelate for more than three months.

Within that period, if a just impediment ceases and an election has not been celebrated, those who ought to have elected shall lack the power of electing on that occasion, and the power of electing itself shall devolve upon the person who is known to preside as the nearest superior.

The person upon whom the power has devolved, having God before his eyes, shall not delay beyond three months canonically ordering the widowed church, with the counsel of his chapter and other prudent men, from a suitable person of that church itself or of another if a worthy person is not found in it, if he wishes to escape canonical punishment.

Chapter XLII

Latin source headnote: An election in cathedral churches must proceed through one of the three forms contained here—namely, scrutiny, compromise, and inspiration. An election celebrated otherwise is not valid, and those acting contrary to this are to be deprived of the power of electing on that occasion. This is what it says down to § *But this*. — § 1. It forbids appointing a proctor in the business of an election unless the conditions contained here concur, down to § *Elections*. Abbas Siculus. — § 2. It commands that elections be solemnly published and that clandestine elections be rejected. This is what it says down to the end. Abbas Siculus.

The same in the same council.

Because, on account of the diverse forms of elections which certain persons endeavor to devise, many impediments arise and great dangers threaten widowed churches, we establish that, when an election is to be celebrated, with all those present who ought, wish, and are conveniently able to participate, three trustworthy persons from the college are to be assumed. Secretly and individually they are diligently to ascertain the votes of all and, having reduced them to writing, immediately publish them in common, with no impediment of appeal whatsoever interposed, so that, after a comparison has been made, the person upon whom all or the greater and sounder part of the chapter agrees may be elected.

Or at least the power of electing is to be committed to certain suitable men, who in place of all may provide a pastor for the widowed church. An election made otherwise shall not be valid, unless perhaps it was celebrated in common by all, as if through inspiration, without defect. Those who attempt to elect contrary to the prescribed forms shall be deprived of the power of electing on that occasion.

§ 1. But this we entirely forbid: that anyone appoint a proctor in the business of an election unless he is absent in a place from which he ought to be summoned and, detained by a just impediment, cannot come. Concerning this, if there is need, he is to furnish proof by oath; and then, if he wishes, he may commit his authority to one person from that college itself.

§ 2. We also reject clandestine elections, establishing that, as soon as an election has been celebrated, it is to be solemnly published.

Chapter XLIII

Latin source headnote: One who assents to an election made of himself through abuse of secular power is rendered ineligible for a dignity, and the election is null. Those electing are suspended from benefices for three years and are then deprived of the power of electing.

The same in the same council.

Whoever, contrary to canonical liberty, presumes to assent to an election made of himself through abuse of secular power shall both lack the advantage of the election and be rendered ineligible, nor without a dispensation can he be elected to any dignity.

Those who presume to celebrate an election of this kind, which we judge to be invalid by the law itself, shall be entirely suspended from offices and benefices for three years, being then deprived of the power of electing.

Chapter XLIV

Latin source headnote: If through negligence a prelate has confirmed an unworthy person elected to the governance of souls, he loses the power of confirming that person's first successor and is suspended from receipt of his own benefice, and the person promoted is cast down. But if he did this through malice, he is punished more gravely. Persons elected who are immediately subject to the Pope ought to approach the Pope in person or through instructed persons and seek confirmation. If they were elected in concord and are very remote—namely, situated beyond Italy—they administer in the meantime, in such manner, however, that they alienate nothing; but they are blessed and consecrated as has been customary.

The same in the same council.

There is nothing which harms the Church of God more than that unworthy prelates are assumed to the governance of souls. Wishing, therefore, to apply a necessary remedy to this disease, we sanction by an irrefragable constitution that, when anyone has been elected to the governance of souls, the person to whom his confirmation belongs shall diligently examine both the course of the election and the person of the elect, so that, when all things have duly concurred, he may bestow upon him the gift of confirmation. For if otherwise something has been incautiously presumed, not only is the person unworthily promoted to be cast down, but the person unworthily promoting is also to be punished.

We decree that the latter is to be punished by this correction: when his negligence is established, especially if he has approved a man of insufficient knowledge, dishonorable life, or unlawful age, he shall not only lack the power of confirming that man's first successor but shall also, lest by some chance he escape punishment, be suspended from receipt of his own benefice until, if it is equitable,

he can merit indulgence. But if he is convicted of having transgressed in this through malice, he shall lie under a graver punishment.

§ 1. Bishops also shall take care to promote to sacred orders and ecclesiastical dignities such persons as can worthily fulfill the office committed to them, if they themselves desire to escape canonical punishment.

§ 2. Moreover, those who pertain immediately to the Roman Pontiff shall, to receive confirmation of their office, present themselves personally before his sight if this can conveniently be done, or transmit suitable persons through whom diligent inquiry concerning the elections and the elected can be held. Thus at last, through the circumspection of his counsel, they may obtain the plenitude of their office when nothing from the canonical institutes obstructs them. Meanwhile, however, those very remote—namely, situated beyond Italy—if they were elected in concord, may by dispensation, because of the necessities and utilities of the churches, administer in spiritual and temporal matters, in such manner nevertheless that they alienate absolutely nothing from ecclesiastical property. They shall receive the gift of blessing or consecration just as they have hitherto been accustomed to receive it.

Chapter XLV

Latin source headnote: The necessary expenses which a chapter incurs for the election of a prelate ought to be made or repaid from the goods of the prelacy.

Honorius III to the Chapter of Constantinople.

So that, once the subject matter of the past contention has been decided, the occasion for future disputes may be cut off, by authority of the present writings we establish that the necessary expenses which the chapter of Constantinople or its messengers have incurred while the see was vacant for the business of the election shall be made entirely or repaid from the goods of the patriarchate, provided that they do not occupy or usurp the goods of the deceased patriarch.

Chapter XLVI

Latin source headnote: An election celebrated after an interval following the comparison is not valid. This says, according to the more common opinion.

The same to the Bishop-elect of Lyon.

After the resignation of our venerable brother, the former Archbishop of Lyon, had been urgently sought and at last obtained, the votes of the canons of Lyon agreed unanimously upon you, then their provost. But, when at length we had examined the course of your election, as was fitting, we found that it had been delayed for some time after the publication of the assents and the discussion of the comparison, and that your assent had been sought before you were elected. Justice therefore requiring it, we quashed that election solely because of its disorderly course. [The third day before the Ides of January, in the eighth year—1224.]

Chapter XLVII

Latin source headnote: A monk of one monastery who has been made abbot of another has no voice in the election of the abbot of the former monastery, even if such a right was reserved to him by the

abbot and monks of the former monastery.

The same to the Prior of Évreux and Master Guy of Canopo.

When the proctors of our beloved sons, the abbots of Saint-Taurin of Évreux and Saint-Leufroy de la Croix, and of the monastery of Fécamp, had appeared in our presence, we appointed our beloved brother B., cardinal-priest of the title of Saints John and Paul, as auditor. Before him the proctors of the aforesaid abbots alleged that, when the aforesaid monastery—which belongs immediately to the Roman Church—was vacant, the monks of that place, in contempt of the aforesaid abbots, who conveniently could and by right ought to have been summoned, rashly proceeded to the election of an abbot and presumed to elect Ethard, formerly Abbot of Saint-Josse, who was insufficiently suitable for its governance. They therefore sought to have an election of this kind rendered wholly void. But when the proctors of those abbots were ordered to state by what right the abbots themselves ought to take part in the election of the abbot of the monastery of Fécamp, they answered that formerly, when they were taken up as abbots in their own monasteries, it had been specially granted to them by the abbot and convent of the monastery of Fécamp that they should have a voice in the chapter of the same. We, however, judging a reason of this kind frivolous, with the counsel of our brothers impose perpetual silence upon the aforesaid abbots concerning this matter.

Textual note: The source prints *Eboracensi* and *Eboracensis*, forms that ordinarily denote York. The Norman institutional context identifies the place here as Évreux (*Ebroicensis*): Saint-Taurin was an abbey of Évreux, and the dispute concerns Fécamp and Saint-Leufroy de la Croix.

Chapter XLVIII

Latin source headnote: An election ought to be made by word, and of him upon whom the greater part of the chapter has agreed, and not with regard to the other factions.

The same to the Chapter of Rouen.

Your church being deprived of a pastor, and your votes being divided in different directions when you were deliberating about the future succession of a prelate, some of you agreed upon Thomas, some upon the chancellor, and particular persons upon particular persons of the same church. But when many things had been alleged on both sides concerning these matters in the presence of us and of our brothers, we found that those who directed their desires toward Thomas, although they constituted the greater faction in comparison with the smaller factions, nevertheless did not amount to the greater part of the chapter. We considered, moreover, that after the publication of the assents and the discussion of the comparison no procedure toward an election had taken place, although the solemn ceremony of conducting him was carried out even after a lawful appeal; it would neither be fitting nor expedient for that ceremony to be held as an election. Hence, with the counsel of our brothers, we quashed what was done concerning the aforesaid T., the petition of those agreeing upon the chancellor likewise not being admitted.

Chapter XLIX

Latin source headnote: One who has not made profession cannot be elected as abbot.

Gregory IX.

Since one who has not assumed the form of a disciple ought not to be assumed as a master, nor ought one who does not know how to be subject be placed over others, we, having learned from you that in certain religious houses subject to you by diocesan right some persons who have not professed a religious order have been taken up as abbots, command that—since those ought not to be abbots who have not become monks or canons regular by profession—you proceed, the obstacle of appeal having been removed, to the removal of those whom you find to be such.

Chapter L

Latin source headnote: An election made by less than the greater part of the chapter, with the comparison omitted, is not valid.

The same to the Chapter of Como.

The church of Como being deprived of the consolation of a pastor, and those of the canons of Como who were present having assembled on the day fixed for celebrating the election, together with three abbots [namely, those of Saint Abbondio, Saint Carpophorus, and Saint Julian of Como], who are known to have a voice in the election, the chaplains and clerics of the city, saying that they ought to take part in the election, were admitted under this protest: that the vote of those who ought not to take part by law or custom would not be valid. At length, after a scrutiny had been held in accordance with the form of the general council, seven of the canons, one of the abbots, eleven chaplains, and nine clerics agreed upon the archpriest of the same church, while nine canons, one of the abbots, one chaplain, and eleven clerics directed their votes toward the archdeacon of that church.

[And when the proctors of both of them had come into our presence concerning the election, we appointed our beloved son O., cardinal-deacon of Saint Nicholas in the Tullian Prison, as their auditor; and when he had faithfully reported to us the things that had been alleged before him,] since there were eighteen canons, three abbots, twenty clerics, and fourteen chaplains, we found that neither election had attained the greater part of the whole chapter. Nor had it been proved [by the same proctors] that the clerics ought to have been admitted, or that the chaplains had been admitted by custom or by law. For, although the chaplains had taken part in two elections of bishops and had furnished scrutineers of the votes, nevertheless it is not proved that their own votes had been ascertained or that they had elected anyone. But even if their votes had been ascertained or they themselves had elected anyone, it was nevertheless not established by this that such a right belonged to them by law or by a custom already acquired by prescription. Hence we, with the counsel of our brothers, decreed that those presumed elections—made also contrary to the form of the general council, since the comparison in common, which ought to have taken place after publication of the scrutiny, had been omitted—must be judicially rendered void, [and] we deprive the electors of the power of electing on this occasion. [Given at the Lateran, the twelfth day before the Kalends of April, in the second year—1228.]

Chapter LI

Latin source headnote: Through an agreement made with a prelate and chapter, the right of electing cannot belong to a layman, even to a patron, in a collegiate church.

The same to the Abbot of Cluny.

The Holy Roman Church (*And below:*) Indeed, you proposed in our presence that, concerning the appointment of the prior of the monastery of Saint Pancras, which belongs to the church of Cluny, a certain predecessor of yours, with the assent of his chapter, entered into an agreement with the Count of Varenne, its patron, which was contrary to law and harmful to the church itself: namely, that it should be at the choice of the count himself to take for the priorship of the said monastery—only the priors of Cluny and La Charité being excepted—one of the two best men of the whole Cluniac order whom the abbot should consider fit to nominate. (*And below:*) Considering, therefore, that the right of electing in a collegiate church does not fall to a layman, and that this would consequently be pernicious as an example and would redound to the detriment of ecclesiastical liberty, we will that, notwithstanding that agreement, you may freely make provision for the said priory just as for the other priories subject to you, notifying the patron of the appointment made so that, if he wishes, his honorable assent may be imparted.

Chapter LII

Latin source headnote: If those having the right to elect are commanded by the Pope to elect with the counsel of certain persons, failing which the counselors are to make provision, the electors ought to seek the counsel during the deliberation concerning the election and await a response for a suitable time; otherwise the election does not hold.

The same to the Dean and Chapters of Saint John and Saint Stephen of Besançon.

Since in the old law (*And below:*) Indeed, some time ago we commanded you that, within forty days after receipt of our letters, with the counsel of the abbots of Saint-Bénigne and Morimond and of Brother G. of the Order of Preachers, you were canonically to elect a suitable person as pastor; otherwise, the said counselors were to provide you with an archbishop. But on the day fixed for electing, six of you conferred the power of electing, which was to last until the consumption of a certain candle that was then lit there. At length, when electors of this kind had agreed upon the aforesaid Abbot of Saint-Bénigne and had sought the counsel of his associates concerning this, one of them proposed that they should answer after deliberate counsel. While they delayed giving them a prompt response, the aforesaid electors, because the candle was failing, did not await their counsel but elected the said abbot as Archbishop of Besançon. (*And below:*) Therefore, when the business had been reported to the Apostolic See, we enjoined the Archbishop of Vienne and the Abbot of La Ferté that, if it were established that the same electors had held a deliberation concerning the election and that the counsel of the aforesaid persons had been sought during the deliberation concerning the election, they should confirm the election of the abbot himself if his person was suitable. But if their counsel had not been sought during the deliberation concerning the election, although it had afterward been sought at an unsuitable time and their response had not even been awaited, or if that abbot were not suitable, they were to render void, as invalid, what had been done concerning him. (*And below:*) Since, however, it was not found that counsel concerning the person of the aforesaid abbot had been sought at a suitable time, and, when it was sought, their response was awaited only for a short time, and since it ought not to be imputed to others that those men had so greatly narrowed the time for themselves, we have decreed that the election of the abbot himself is to be rendered void, not because of a defect in the person, but because of a defect in the election.

Chapter LIII

Latin source headnote: If the greater part of a chapter knowingly elects an unworthy person, the election of a worthy person by the lesser part is valid, even if made from the same scrutiny. This it says according to the truer and intrinsic understanding.

The same to the Bishop of Senlis.

When the chapter of Nevers had assembled for the election of a future pastor, thirteen agreed upon the dean and eighteen upon the cantor of that church, the vote of the proctor of a certain absentee being counted. Since more persons had directed their desires toward him and fewer toward the other, the cantor was elected by his own faction as pastor of the church of Nevers. Afterward, the faction of the dean, believing that the others had gravely offended by electing a person devoid of literary learning, by reason of which, according to the statutes of the Lateran Council, those others were deprived by the law itself of the power of electing and the power of electing had devolved upon them, elected as their bishop the dean himself, toward whom they had directed their votes, and appealed to the Apostolic See. (*And below:*) The others petitioned that we deign to render void the election of the dean, as one attempted by the fewer and after another election had not been quashed, and to confirm the other as one canonically celebrated by the greater number concerning a suitable person. We therefore command that, if the said cantor does not suffer from a defect in literary learning and is otherwise suitable for pastoral governance, you take care by our authority to confirm his election, after invalidating the other. Otherwise, after pronouncing the election of the cantor himself void, by the same authority you shall place the aforesaid dean over the said church, provided that nothing in the canonical statutes obstructs him.

Textual note: The source's *veriorom* in the headnote is the evident typographical error *veriorem*, "truer."

Chapter LIV

Latin source headnote: One who has several dignities or several benefices with cure of souls is ineligible without a dispensation from the Pope. This it says as regards the title.

The same to the Bishop of Senlis, John of Montmirail the Archdeacon, and the Succentor of Paris.

Some time ago, when the church of Rouen was deprived of the consolation of a pastor, A. the archdeacon and certain other canons of that church approached the Apostolic See against an election that had been celebrated in the same church. When the said archdeacon, on behalf of himself and his faction, and G. the archdeacon, proctor of those who had celebrated the election, had appeared in our presence, among the other things that had been objected against the elect, the aforesaid archdeacon alleged that, after the general council, the same elect obtained the archdeaconry of Amiens and presumed to retain it together with several parish churches that he had obtained before that council; and, after relinquishing the archdeaconry, he retained the aforesaid churches.

§ 1. Hence, since it was established in the same council that whoever receives any benefice having the cure of souls annexed to it, if he previously held such a benefice, is deprived of the latter by the law itself, and, if perchance he contends to retain it, shall be despoiled of the other also, the aforesaid elect, by acting contrary to statutes of this kind, incurred from the plurality of benefices the mark of

transgression as well as the vice of cupidity, which he ought to have reproved in others. And by retaining benefices that did not belong to him—since after the receipt of the other benefice the former benefices had become vacant by the law itself—he consequently handled the property of another, and thus in a certain manner committed theft or rapine. To the detriment of his own salvation and of many souls he also retained the aforesaid parish churches, although their cure, of which he had already been deprived by the law itself, in no way belonged to him; and thus those souls were damnably deceived through him.

§ 2. But the proctor of those who had elected him, although before us in judicial proceedings he admitted a plurality of benefices of this kind, nevertheless strove in many ways to excuse that elect through a grant of the Archbishop of Rouen exhibited to us. We, therefore, admitting that excuse in no way, as being frivolous, commanded you that, if it were established that, after receiving the aforesaid archdeaconry having the cure of souls, he retained the aforesaid parish churches at the time of the election and did not show that the Apostolic See had dispensed with him concerning this, you should quash his election by apostolic authority. (*And below:*) When the parties had therefore appeared in your presence because of this, an oath to tell the truth had also been taken, and formal allegations and responses had been made on both sides, at length, when the same dean appealed to our hearing on the pretext of certain grievances, you rendered an election of this kind void and provided the same church with the Bishop of Le Mans. (*And below:*)

§ 3. Although formal allegations and responses were made before you upon several articles, nevertheless, because we did not find that the issue had been joined—since joinder of issue takes place not through formal allegations and responses made to them, but through a petition proposed in law and a response made—we decreed, with the counsel of our brothers, that those proceedings were to be pronounced void.

§ 4. At length the archdeacon petitioned that the election be rendered void for the aforesaid reason, while the aforesaid elect answered that his election was not to be rendered void. But when the issue had lawfully been joined before us and an oath to tell the truth had been taken by the parties, the same elect, although he admitted that he had held the said benefices at the time of the election, nevertheless strove to excuse himself concerning this, namely because he did not believe that the said archdeaconry had the cure of souls. But since in judicial proceedings he admitted that the Archdeacon of Amiens customarily suspends, excommunicates, and absolves priests and priors, places parish churches under interdict, and also visits, inquires into those matters that he sees ought to be investigated, and receives procurations by reason of visitation, it plainly appears that the archdeaconry has the cure of souls annexed to it. Even if it did not have that cure, he cannot deny that it is a personate, since the same judgment is to be made concerning personates as concerning benefices having the cure of souls.

§ 5. Moreover, we judged invalid the indulgence that he asserts he has concerning this, since in obtaining it he suggested a falsehood and suppressed the truth, although, had the former been concealed or the latter expressed, he would in no way have obtained it. For he suggested that he had canonically obtained the aforesaid parish churches before he was assumed as archdeacon, although no one could hold several parish churches unless one depended upon the other, or unless he had one by title and the other in commendam. Hence, since he had both of those churches by title, he could not have held them canonically. Likewise, by suggesting that the revenues of his personate were

slight and meager, he suppressed the fact that he was known to hold other revenues in several churches. He also suppressed the fact that he held several parish churches together with several other benefices in different churches, although it was not our intention to dispense with him in so many benefices, especially those having the cure of souls; nor was it our intention to grant anything new, but only that through the indulgence he might lawfully retain what he already had. (*And below:*)

§ 6. At length, when nothing remained except that sentence be rendered, of his own free will he relinquished both the right, if any seemed to belong to him, and the suit; we decreed that his relinquishment was to be admitted.

Chapter LV

Latin source headnote: An election is void if it was not preceded by a comparison, or if it was not made by the greater part of the chapter, or if it was not common.

The same.

In Genesis it is read (*And below:*) Since provision is made in the council that, after a comparison has been held, he is to be elected upon whom all or the greater and sounder part of the chapter agrees; and since the greater part of the whole chapter did not agree upon G., although he had the greater faction in comparison with the smaller factions; and since there was no full comparison of number with number, because whether G. and H., concerning whom the adversaries raise a question, had a voice in the election was neither deliberated nor determined; and since no comparison was made of zeal with zeal or merit with merit; and since the election was not even celebrated in common—for, although the individuals had each individually agreed upon the same G., nevertheless an individual election ought not to have followed, but a common one, lest either the same thing seem to be repeated or from this there follow the absurdity that there should be as many elections in number as there were electors; nor from individual or particular assents would a universal or common election appear, although each individual assent expresses the truth of its own part, just as a universal proposition does not appear from individual propositions, although true, unless perhaps it is expressed through a universal sign; and since the aforesaid two canons could not be excluded in this way, because the first was in possession or quasi-possession of a canonry, having a stall in the choir and a place in the chapter, reading and chanting as a canon, and had been summoned as a canon to deliberations and elections of dignities and personates that arose to be made from time to time, although on this occasion he was admitted under protest, while the second was in such a place that he ought to have been summoned from it to the election, since by the custom of the Gallican Church absentees are summoned from the whole kingdom of France—we, having understood these matters more fully, with the counsel of our brothers decree the aforesaid election void and empty, as one attempted contrary to the form of the council.

Chapter LVI

Latin source headnote: The election of a bishop made by laymen and canons is not valid, even if custom supports this. This it says, and it is customarily cited every day.

The same to the Chapter of Massa.

When the church of Massa was vacant of a pastor (*And below:*) By a perpetual edict we prohibit an election of a bishop from being presumed by laymen together with canons. If perchance such an

election has been presumed, it shall obtain no firmness, notwithstanding a contrary custom, which ought rather to be called a corruption.

Chapter LVII

Latin source headnote: It is not sufficient for the confirmation of an election that it was made by the greater part of the chapter unless that part is also the sounder.

The same to the Chapter of Châlons.

When your church was deprived of a pastor, you assembled together and, in the absence of G., who was then unwilling to take part, established a date for celebrating the election. But when the date arrived, and the said G., since he was absent, had not been summoned, after a scrutiny had been held according to the form of the general council, fourteen elected Master G., cardinal-priest and your fellow canon, and seventeen elected R., a canon of Reims; afterward, the aforesaid G. furnished his assent to the election of the same R.

At length, when the proctors of both factions had appeared in our presence, it was alleged on behalf of the election of the said R. that, because it exceeded the other by four when the aforesaid G. was counted, it had the greater part of the chapter, and through this his faction ought to be regarded as the sounder, since where there is a greater number, better zeal is presumed. But the other faction attacked that election in many ways, alleging that the aforesaid R. suffered from a defect of age and did not possess sufficient learning for the aforesaid church, whereas the aforesaid cardinal was of mature age and eminent learning; and, since the cardinal's electors excelled the others in merits and authority, especially when regard was had to the person elected, it was established that they had better zeal. It was said besides that the assent of the said G.—whom the faction of the same R. admitted to have been contemned, while the other faction asserted that the chapter had rather been contemned by him—could add nothing, since it was not furnished in the scrutiny but acceded after the election. (*And below:*)

Finally, the statute of the general council that decrees an election invalid when an offense is committed in an election against the form of that council ought not to be referred to contempt and to other matters that do not belong to the form. Hence, what is said there—that an election celebrated otherwise is not valid—regards only those things that are attempted against the form of the aforesaid council, and not other things that are set down there, such as the requirement that the procedure in an election be held with all those present who ought, wish, and are conveniently able to take part; otherwise, the other things known to have been established elsewhere concerning this would seem to be overthrown by one word. For it is not to be believed that the Roman Pontiff, who protects laws, wished by one word to overturn what had elsewhere been devised through many vigils and discovered.

We, therefore, having more fully understood the things alleged on both sides, since by the Lateran Council the greater and sounder part of the chapter is required in the ordering of churches, and the statute of the general council contains, among other things, that he is to be elected upon whom all or the greater and sounder part agrees, have decreed, with the counsel of our brothers, that the election of the said R. is to be judicially rendered void—not because of a defect in the person, but rather because of a defect in the election—since the greater and sounder part did not agree upon him.

Chapter LVIII

Latin source headnote: Once the scrutiny has been published, the electors cannot change their votes, but they ought to be compelled to proceed to the comparison and election.

The same.

Once the scrutiny has been published, the electors cannot change their votes, since the comparison is to be made and the election celebrated. If it is necessary, they are to be compelled to this by the superior.

Chapter LIX

Latin source headnote: When an election has been quashed because of simony, even without fault of the elect, the bishop does not dispense with the person quashed on that occasion; it is otherwise if the elect freely resigned. This it says according to the understanding of gloss 2 at the end.

The same.

If it happens that someone's election is rejected because of simony committed without his knowledge and not ratified by him, the bishop cannot dispense with him on that occasion concerning the prelacy to which he had been elected in such a manner, although, with regard to one who unknowingly receives a simple benefice through simoniacal depravity, a dispensation by the bishop after a free resignation is tolerated.

Chapter LX

Latin source headnote: Time runs against impeded electors if they are able to remove the impediment.

The same.

For those who are forbidden to presume to elect without the license of a superior, the time established by the canon runs from the point at which they are in delay in seeking such a license.

Title VII: On the Translation of a Bishop

Chapter I

Latin source headnote: A patriarch who transfers one confirmed as archbishop to an episcopal see is suspended from the confirmation of bishops. Johannes Andreae.

Innocent III to the Patriarch of Antioch.

Since from that general privilege which our Lord granted to blessed Peter and, through him, to the Roman Church, canonical institutes afterward flowed, containing that the greater causes of the Church are to be brought to the Apostolic See; and since through this the translations of bishops, like their depositions, and changes of sees belong by law to the supreme prelate of the Apostolic See, and nothing concerning these matters ought to be altered without his assent: we wonder not a little and are moved that [you], following the example of your predecessor—who is said, by a movement of his own will, to have transferred the Archbishop of Mamistra to Tarsus—transferred L., formerly elect of Apamea, to the church of Tripoli. Nor was it sufficient for you merely to imitate the aforesaid

presumption of your predecessor; rather, to our injury you even surpassed his excess and, by a certain new kind of change, made the greater small and in a certain manner diminished the great, presuming to make an archbishop a bishop—or rather, to un-archbishop him—although your said predecessor transferred the aforesaid archbishop from the church of Tarsus to a church of like dignity.

For although the said L. had not yet been consecrated as archbishop, he had nevertheless received the gift of confirmation and had exercised archiepiscopal functions insofar as it was lawful for him, as became known to us through his own account; for, when he had appeared in our presence, he asserted that he had confirmed the Bishop of Valania. Therefore, lest boldness to perpetrate similar acts be furnished to others if so great an excess should be left unpunished, we have decreed that you are to be suspended from the confirmation of bishops until we establish otherwise concerning this, [knowing, etc. Given at the Lateran, on the sixteenth day before the Kalends of April, 1198.]

Chapter II

Latin source headnote: The Pope alone can transfer persons elected and confirmed as bishops.

The same to the Dean and Chapter of Angers.

Between corporeal and spiritual things we have recognized this difference: corporeal things are more easily destroyed than constructed, but spiritual things are more easily constructed than destroyed. Hence, according to the canonical sanctions, a bishop alone can give an honor, but he alone cannot take it away. Bishops also receive the gift of consecration from their metropolitans, but they cannot be condemned except through the Roman Pontiff.

Since, therefore, the spiritual bond is stronger than the carnal, it ought not to be doubted that almighty God reserved for his judgment alone the dissolution of the spiritual marriage that exists between a bishop and a church, for he also reserved for his judgment alone the dissolution of the carnal marriage that exists between a man and a woman, commanding that man not separate those whom God has joined. For a spiritual marriage is dissolved not by human but rather by divine power, when by the authority of the Roman Pontiff—who is established to be the vicar of Jesus Christ—a bishop is removed from a church through translation, deposition, or even resignation. Consequently these three things which we have set forth are reserved to the Roman Pontiff alone, not so much by canonical constitution as by divine institution.

For just as a consecrated bishop ought not leave his church without the license of the Roman Pontiff, so also one elected [and] confirmed cannot, apart from his assent, leave his church, to which he is bound matrimonially. It ought not to be called into doubt that, after canonical election and confirmation, a spiritual marriage is contracted between the persons of the electors and the elect. Episcopal dignity assuredly adds nothing to this, since one endowed with episcopal dignity can nevertheless be the bishop of no church, as happens with one who renounces the burden of the pontificate but not its honor. Hence, since the bond of a bishop to a church is not greater than that of an elect—especially when he has been confirmed—but is entirely the same and not another, the same rule of law obtains in both. Therefore, just as the translation, or even the deposition and resignation, of bishops, so also that of elects after confirmation is, by reason of the spiritual marriage, reserved to the Roman Pontiff alone. Although down to these times what had been provided concerning bishops had not been expressed concerning elects, nevertheless, because of the manifest similarity—or rather

identity—it could seem doubtful to no one looking closely, since the same judgment is to be made concerning similar things.

§ 1. Nor could the passage read in the canon concerning an elect support those who understood otherwise: that if through his own negligence he keeps a church widowed for more than six months, he is to receive the gift of consecration neither there nor elsewhere, but rather is to yield to the judgment of his metropolitan. For a church is not understood to be widowed as though it has no spouse, but because, since its spouse has not yet been consecrated, it still remains in certain respects as though deprived of the consolation of a husband; just as, according to the common manner of speaking, that church is called widowed which, although it has a bishop, is nevertheless said to have a useless one.

Nor ought what follows concerning yielding, and was established as a penalty, be drawn into a favor, so that, just as an elect is cast down by the judgment of his metropolitan, he may likewise be transferred to another church—especially since even the aforesaid resignation or casting down does not occur without the authority of the Roman Pontiff, who granted to metropolitans by that canon that they could do these things. Hence, if he had wished the same thing to be done concerning translation as he had said concerning resignation, he could also have expressed it concerning translation. What has not been sanctioned by a decree of the holy Fathers is not to be presumed through superstitious inventions, especially since that which is not found to have been granted is sometimes understood to have been prohibited.

§ 2. Indeed, because the Archbishop of Tours presumed, apart from the authority of the Apostolic See, to transfer the elect of Avranches—afterward confirmed by his metropolitan—to your church and to consecrate him as bishop, and because our venerable brother the Archbishop of Rouen also, without our mandate, released him and granted him license to pass over, the Archbishop of Bourges, according to the tenor of our mandate, suspended the aforesaid archbishops, who ought at least to have consulted the Apostolic See concerning this new matter that had arisen, especially since according to the canonical sanctions the greater ecclesiastical causes are to be referred to the Apostolic See, from the consecration and confirmation of pontiffs alike, and suspended the bishop from the exercise of the pontifical office.

And although the same Archbishops of Tours and Rouen, as the greater persons, transgressed more in the aforesaid matters, while the aforesaid bishop transgressed less, inasmuch as he followed the error of those greater persons, nevertheless, having learned through the letters and messengers of those archbishops of their spontaneous confession and devout supplication, we granted pardon for their error, because they sinned not from malignity but from simplicity.

And because the aforesaid bishop, who had both sinned less and, as appears from the foregoing, had been chastised more severely, approached the Apostolic See, though of his own free will yet not without many labors and expenses, humbly and devoutly acknowledging his guilt, seeking mercy and not demanding judgment, we held a common deliberation with our brothers concerning his deed. Looking closely, we saw that, although the gift of consecration had been bestowed upon him, it had made him the pontiff neither of the first church nor of the second: of the first, because he had not been consecrated for it; and of the second, because, while the former bond endured, he could not canonically be consecrated for it, since he was still conjugally bound to the other.

Nevertheless, prudently attending to the fact that both the urgent necessity and the evident utility of your church—since you could not agree upon another suitable person—required the favor of dispensation, after absolving him entirely, from the plenitude of power, both from the bond of the former church and from the penalty of suspension, we decreed, from the benignity of the Apostolic See, that it should be granted to him that, since the former assent has endured until now, as was intimated to us through the letters of the persons of your church, he is to strive to govern the church of Angers as its proper pontiff, to the glory and praise of God's name, to the honor and exaltation of that church, and to the salvation and utility of himself and of both the clergy and people committed to him, so that, with divine grace preceding and following, he may wish and be able to profit more than to preside [etc. Given at the Lateran, on the twelfth day before the Kalends of February, 1199.]

Chapter III

Latin source headnote: A bishop who by his own authority transfers himself from his church to another shall lack both.

The same to the Bishop and Peter, Scholasticus of Mainz.

The more sincerely we loved the person of our venerable brother, the former Bishop of Hildesheim, the more confidently we hoped that he would attempt nothing against his mother, the Roman Church, to the prejudice of his order and the detriment of ecclesiastical discipline. But he, as we discovered from the certain assertion of many and likewise learned from the testimony of his own letters directed to us, in which he styled himself Bishop of Würzburg, left the church of Hildesheim, to which he had been joined in marriage by spiritual grace, and by his own authority transferred himself to the church of Würzburg without the authority of the Roman Pontiff, not attending to what the Truth declares in the Gospel: "What God has joined, let man not separate."

[For] the Lord and Master so retained to himself the power of transferring pontiffs that by a special privilege he bestowed and granted it to blessed Peter alone, his vicar, and through him to his successors, and to us ourselves, who, although unworthy, hold his place on earth. Antiquity bears witness to this, to which the decrees of the Fathers sanctioned that reverence should be shown, and the sanctions of the sacred canons plainly affirm it. For it is not man, but God, who separates those whom the Roman Pontiff—who exercises on earth the office not of a mere man but of the true God—releases, after weighing the necessity or utility of the churches, not by human but rather by divine authority. (*And below:*)

But lest the perversity of the deed pass as an example to presumptuous persons—a deed which, if it is true, cannot but be notorious—by the authority of almighty God, of the blessed Apostles Peter and Paul, and of ourselves, with the common counsel of our brothers, in the power of the Holy Spirit we strictly command him that, upon seeing our letters, all contradiction and appeal ceasing, he entirely abandon the administration of the church of Würzburg in both spiritual and temporal matters.

If, however, which we do not believe, he does not take care humbly to observe this suspension of ours and presumes to usurp what has been forbidden to him, we decree that he is bound by the bond of excommunication. We also command all the clerics and laymen of the diocese of Würzburg, under threat of anathema, that, notwithstanding an oath of fidelity, they withdraw from him all obedience, which he has usurped for himself contrary to the sacred canons, not attending to what the Apostle says: "Let no one assume the honor for himself, but he who is called by God, as Aaron was."

Moreover, because the canons of the church of Würzburg conferred their votes upon him wholly unlawfully, wishing, as is fitting, that they be punished in that in which they sinned, we suspend them from the power of electing on this occasion. If, contrary to the prohibition of the Apostolic See, they proceed to the nomination of anyone, we decree that what is done by them is void and empty.

And because he most improperly abandoned the aforesaid church of Hildesheim, to which he had been bound and from which, according to the Apostle, he ought not seek release, we more strictly prohibit him, in the power of the Holy Spirit, from returning to it hereafter. For according to the canonical traditions, one who transfers himself to a greater people ought to be driven from the chair of another and to lack his own, so that he may preside neither over those whom he spurned through pride nor over those whom he coveted through avarice. [We also, etc. Given at Spoleto, on the twelfth day before the Kalends of September, 1198.]

Chapter IV

Latin source headnote: The Pope alone transfers bishops, and an indulgence granted by him concerning such a translation is to be observed according to the letter.

The same to the Bishop of Brandenburg and the Scholasticus of Mainz.

Although to such an extent [the authority of the Apostolic See is regarded that nothing in all the affairs of the churches may reasonably be ordered apart from its authority, inasmuch as it either issued the canons through which the form of the ecclesiastical constitution is expressed or approved them when issued by others, making its own by reception and approval what perhaps appeared to belong to another by invention or issuance;] nevertheless, it has reserved certain things to itself in a certain special and singular manner, so that apart from its special authority they neither ought lawfully to be done nor can be attempted with effect.

Among these things, the translations of bishops in particular have been committed to its power alone, not so much by canonical constitution as by divine institution. Just as man cannot dissolve the bond of a lawful marriage which exists between husband and wife, the Lord saying in the Gospel, "What God has joined, let man not separate," so also the spiritual covenant of marriage which exists between a bishop and [his] church—which is initiated in election, ratified in confirmation, and understood to be consummated in consecration—cannot be dissolved without the authority of him who is the successor of Peter and the vicar of Jesus Christ.

But C., formerly Bishop of Hildesheim, not attending to this, with our license neither sought nor obtained, contrary to the canonical sanctions and to the injury of the Apostolic See—whose assent concerning this was both to be sought and obtained—passed from the church of Hildesheim to the church of Würzburg, not by our authority but by his own temerity; and, intruding himself into its administration, caused himself to be styled Bishop of Würzburg.

Nor does that indulgence of our predecessor Pope Celestine of happy memory, which he is reported to have obtained, excuse his presumption in this matter; rather, it accuses his ambition, inasmuch as it rendered him noted for ambition and did not confer authority to pass to another episcopal church. For it is expressed in that indulgence that, if he should perhaps be called to a greater dignity, it would be lawful for him to assume it, provided that nothing in the canonical statutes stood against him. Hence, although it might perhaps seem to some that by occasion of that indulgence he could pass to

a greater dignity, it was nevertheless not lawful for him to pass to an equal one, since a dispensation is more readily customarily made in the case of a greater dignity because of the greater utility.

Moreover, since a postulation, like an election, is customarily examined diligently, and since the tenor of that indulgence appears to reserve not only the examination of the postulation but also that of the person, adding, "provided that nothing appears which stands against you from the canonical institutes," he ought on no account to have passed over before the postulation had been examined by the person to whom it was to be made. [Although, however, etc. Given at the Lateran, on the seventh day before the Kalends of February, 1200.]

Title VIII: On the Authority and Use of the Pallium

Chapter I

Latin source headnote: An archbishop can use the pallium within any church of his province, but he cannot use it outside the province.

Clement III.

Concerning a certain matter (*And below:* [cf. c. 8, *On the Alienation of Ecclesiastical Property*, III.13.]) You also asked how that which is contained in the form for the delivery of the pallium is to be understood, namely: "We deliver the pallium to you so that you may use it within your church." This is understood thus: "within your church," namely, within any church of the province committed to you. But if it happens that, clothed in sacred vestments, you leave the church processionally or in another manner, then you ought by no means to use the pallium. [Given at the Lateran, in the third year, 1193.]

Textual note: The source attributes the decretal to Clement III but dates it to 1193, after Clement's pontificate. The translation preserves both printed statements rather than silently reconciling them.

Chapter II

Latin source headnote: An archbishop cannot lend his pallium to another archbishop.

Celestine III.

As to the fact that it has been asked of us on your behalf whether it is lawful for you to lend your pallium to another metropolitan if it should happen that he comes without his own pallium to the church committed to you on some principal solemnity and celebrates the solemnities of Mass in that church: although we do not recall having found an express canon concerning this, nevertheless we answer your inquiry in such a manner that it does not seem fitting for you to lend your pallium to anyone, since the pallium does not pass beyond the person, but each person ought, as your discretion knows, to be buried with it.

Chapter III

Latin source headnote: Through the pallium are conferred the fullness of the pontifical office and the archiepiscopal name.

Innocent III to C., Cardinal-priest and Legate of the Apostolic See.

Unless that special affection (*And below:* [cf. c. 8, *On the Office of a Legate*, I.30.]) Indeed, even if the postulation of our venerable brother, the Bishop of Troia and Chancellor of the Kingdom of Sicily, to the church of Palermo had been approved by us, he nevertheless ought not call himself archbishop before he had received the pallium from us, in which the fullness of the pontifical office is conferred together with the appellation of the archiepiscopal name. You, therefore, as a provident and discreet man, are to take care so to cloak what has been done that it does not redound to your confusion and the reproach of the Apostolic See, because, if it is necessary that either we or you be confounded by this business, we shall choose that you be confounded rather than that we injure the dignity of the Apostolic See.

Chapter IV

Latin source headnote: The Roman Pontiff uses the pallium always and everywhere; others use it only in their own churches and on certain days.

The same.

For the honor of God [almighty, of the Blessed Virgin Mary, of the blessed Apostles Peter and Paul, of the lord Pope Innocent and the Roman Church, and also of the church committed to you, we deliver to you the pallium taken from the body of blessed Peter, namely the insignia of the fullness of the pontifical office, which you are to use for the solemnities of Mass within the churches subject to you on the Nativity of the Lord, the feast of Stephen the Protomartyr, the Circumcision of the Lord, the Epiphany, the Hypapante, Palm Sunday, the Supper of the Lord, Holy Saturday, Easter, the second weekday after Easter, the Ascension of the Lord, Pentecost, the three feasts of Saint Mary, the Nativity of blessed John the Baptist, the solemnities of all the Apostles, the Commemoration of All Saints, dedications of churches, ordinations of clerics, the principal feasts of your church, and the anniversary of your consecration.]

Indeed, the Roman Pontiff alone always and everywhere uses the pallium in the solemnities of Mass, because he has been assumed into the fullness of ecclesiastical power, which is signified by the pallium. Others, however, ought to use it neither always nor everywhere, but in their own church, in which they have received ecclesiastical jurisdiction, and on certain days, because they have been called into a share of solicitude, not into the fullness of power.

Chapter V

Latin source headnote: An archbishop cannot use the pallium outside his province, even if custom supports this.

The same to the Archbishop of Compostela.

We have learned from the tenor of your letters that, although in the grant of the pallium it was said to you that you were to use it within your church, nevertheless, because you frequently sojourn outside your province both by royal mandate and for attending to the business of your church, it is embarrassing for you to minister without the pallium. Since, as you assert, there is a general custom in Spain that archbishops use the pallium outside their provinces without distinction, you petitioned that the Apostolic See grant you permission to use the pallium outside your province.

Although a use of this kind is an abuse, such a custom is to be called a corruption instead, and those who use their palliums outside their provinces without the special license of the Apostolic See are known to offend gravely, nevertheless, by special grace we grant you that, if at any time, impeded by some necessity, you should perhaps be unable to approach a church subject to you for the purpose of consecrating your suffragans or ordaining clerics, and it should happen that you turn aside for this purpose to the church of another, provided that the person to whom the church belongs permits it, you shall have free faculty to use the pallium in the aforesaid cases. [Given at the Lateran, on the fourth day before the Nones of April, in the year 1209.]

Chapter VI

Latin source headnote: In any church of his province, on the permitted days, an archbishop celebrating Mass can use the pallium.

The same.

Since you are in the most remote regions, we hold it pleasing and acceptable that, in your actions, whenever a scruple of doubt arises, etc. (*And below:*) You should therefore know that, where necessity requires, you may consecrate both several altars in one church and several bishops at the same time; and wherever you are situated in celebrations of Mass, on solemn days you may more freely exercise the use of the pallium, through which the fullness of the pontifical office is signified.

Chapter VII

Latin source headnote: An archbishop can celebrate without the pallium and sandals.

Honorius III to the Archbishop of Lund.

Because we (*And below:* [cf. the final chapter, *On Apostates*, V.9.]) We answer your inquiry in this manner: both in your own and in another diocese you can celebrate without the pallium and sandals, for assuredly in your own diocese you ought not always celebrate with the pallium, but only on those days which are expressed in the privileges of your church. And thus the fourth question is resolved, by which you asked whether it is lawful for you to celebrate for the dead with the pallium. [Given at Rieti, on the third day before the Ides of August, 1225.]

Textual note: The source abbreviates the addressee as *Archiepiscopo Tri.*; the matching dated letter is identified in the Danish regesta as addressed to the Archbishop of Lund.

Title IX: On Resignation

Chapter I

Latin source headnote: Permission to resign is not given to a bishop who wishes to resign because of old age if he is necessary or useful to his church.

Alexander III to the Archbishop of Lyon.

We recently received your letters, full of devotion and not devoid of sorrow, since they both intimated to us your most affectionate charity and sought a resignation from your archiepiscopal office—which we rejoice that you have faithfully discharged and still discharge—that is contrary to the interests of the Church. For you know, as a provident and prudent man, that the evil of the day is so great, and

the pressure of persecution against the Church of God so grave and so prolonged, that it would by no means conduce to its advantage if your see should happen to suffer a failure.

But if, perhaps considering either your old age or your insufficiency, you petition to be released as one who has completed his service, know that we believe and hold for certain that it is safer at this time for the church committed to you to be governed under the shadow of your name than for its governance amid so great a crisis to be committed to another, new and unknown person—especially because the vigor of devotion and faith does not fail in you even as your body grows old; rather, as your bodily condition declines downward, the fervor of your spirit ascends toward higher things.

Therefore, lest the sting of this sorrow wound the living charity of our breast toward you, we admonish you not to make yourself troublesome by any importunity concerning this in these days, because it is proved altogether unfitting to unfasten the belt of military service before the adversity of battles yields to the victor. Press on, therefore, like a good soldier of Christ, and persevere in the office of your solicitude, lest, while you seek the desires of your own quiet, you suffer some loss of the talent entrusted to you.

You ought also to attend to this: if you have wings with which you strive to fly into the wilderness so that you may rest, they are nevertheless bound by the bonds of precepts which, as you know, so bind you by the institution of the sacred canons that you do not have free flight without our permission.

Moreover, brother, lest you complain that we burden you intolerably—you who can know the weakness both of your mind and of your body better than we can—we finally grant you this, if in the judgment of your conscience the matter altogether requires it: that, when an opportunity has been received, you be solicitous concerning the substitution of a person, both through yourself and through the prince of the land, or also through your letters and suitable messengers if you are unable or unwilling to exhibit your bodily presence there, and through other religious and industrious men of that kingdom; and that you strive to find such a successor as will neither degenerate from the brightness of the faith nor stray from the path of rectitude and honor. It is also fitting for you to discuss and deliberate with the same persons concerning those things which you consider should be reserved for your necessities, so that, when all these things have become known to us through both your assertion and theirs, we may be able to proceed in the matter so providently and securely that neither we nor you yourself ought afterward to repent of this work.

Textual notes:

1. The source prints *Londonensi Episcopo*, "to the Bishop of London," although the body expressly calls the office archiepiscopal. The parallel reading *Lugdunensi archiepiscopo*, "to the Archbishop of Lyon," is followed here.
2. The source's *incedens* is the evident typographical error *indecens*, "unfitting."

Chapter II

Latin source headnote: One who has abjured a benefice can lawfully obtain it if he is elected anew.

The same to the Abbot of Dol and the Prior of Artigia.

When a dispute had been conducted for a rather long time in our presence between P. Gaufridi and certain other canons of Saint I. concerning a spiritual benefice—namely, a stall in the choir and a

place in the chapter—the business could not be concluded because the other party had not come sufficiently instructed. Therefore, committing the cause itself to your examination, we command you by apostolic writings to summon the parties before your presence and, after inquiring more fully into the truth of the matter, if you find that the aforesaid P. Gau. was invested by apostolic authority with the aforesaid benefice with the assent of the greater and sounder part of the chapter, you are, appeal being removed, to cause him peaceably to possess the benefice itself. For the oath which he is alleged to have taken that he would not seek it further does not appear to us to present an impediment, if the assent of the greater and sounder part of the canons of the church intervened.

Chapter III

Latin source headnote: One who has resigned his benefice cannot reclaim it.

The same to the Bishop of Veroli.

It was intimated to our ears from the transmitted report of the Abbot of Saint Nicholas of Ceprano that the cleric P. Rubeus, when formerly suffering from illness, petitioned at the monastery of the Holy Savior of Telese that the monastic habit be granted to him. After he later recovered his health, he approached that monastery for the purpose of fulfilling his vow and, remaining there for a little while, caused those things which he had conferred upon the aforesaid church of Saint N. to be restored to him. Now, however, having changed his mind, he labors through you and through your friends to be restored in the aforesaid church.

But since the said church is known to have been released from him from the time when, at his own will and petition, it restored to him those things which he had conferred upon it, we admonish and command your fraternity that, if the matter stands thus, you are on no account to compel the aforesaid abbot and his associates, against their will, to receive the aforesaid P., nor are you to permit them to be compelled by the people of Ceprano. You may nevertheless exhort and admonish them, if it matters so much to you, to receive him as an associate and brother, not as one of the church but as though he ought to enter anew.

Chapter IV

Latin source headnote: A beneficed person cannot resign a benefice without the license of his prelate.

The same to the Bishop of Tournai.

The care of the governance we have undertaken admonishes us, and pontifical authority induces us, to be solicitous for the condition of churches and to attend with undiminished zeal to their progress and increase. Therefore, by apostolic writings we command your fraternity, by way of precept, to establish and ordain by our authority and yours that the ecclesiastical persons of your bishopric shall not dare to make any testament concerning those things which come to them from the goods of churches or which have accrued to them by reason of those churches, but that those goods shall pass to the churches themselves, as is just and canonical. If, however, any of those persons have died intestate, you shall likewise decree that the goods which accrued to them from the churches or by reason of them pass to those same churches. Indeed, concerning those goods which were acquired by right of patrimony or from elsewhere in favor of the person, they shall have free faculty to make a testament.

Likewise, on our behalf and yours, under strict prohibition you shall forbid all ecclesiastical persons of your bishopric to dare, without your assent, to enter or detain churches of your diocese that pertain to your appointment, or to relinquish them without consulting you. If anyone presumes to act contrary to your prohibition, relying upon our authority and yours you shall exercise canonical punishment against him.

Chapter V

Latin source headnote: Against one seeking a benefice, the exception of voluntary abjuration is admitted even when the cause of the resignation is not added. Against this the plaintiff will be able to reply that he did not resign voluntarily, and the one who proves his case better will prevail.

Clement III.

Concerning your inquiry whether, against persons reclaiming ecclesiastical benefices, an exception of voluntary abjuration is to be admitted without cognizance of the cause, and whether the proofs of the plaintiff that he did not resign voluntarily or those of the defendant concerning voluntary resignation ought to be admitted, we answer your experience thus: no reason renders it likely that anyone would easily and rashly resign voluntarily, without a weighty cause, a benefice acquired perhaps through many expenses and labors and by which he ought to be supported. Consequently, we do not believe it superfluous for the cause of the renunciation or resignation to be diligently investigated.

If the ordinary or delegated judge should find that cause to be a probable one—that is, one not extorted by force, fear, oppression, the intervention of money, or a promise—and especially if no oath intervened, which is scarcely believed to be made of one's own will and is almost always from evil, he shall not postpone admitting the exception unless a canonical reply has been opposed.

Moreover, although by the nature of things there is no proof of a fact for one who denies it, nevertheless, in the case of one who denies a voluntary resignation, since by replying he implicitly and in a certain manner takes issue with the assertion, we believe that proofs are to be admitted, regard being had to his dignity and reputation.

Chapter VI

Latin source headnote: One who voluntarily renounced an election made concerning him ought not thereafter to be heard concerning that election.

The same.

In our presence [our beloved son R., formerly Abbot of Thorney, appeared and set forth before us that, when you had once come to his monastery, which he himself had enlarged by an income of one hundred marks, and, having entered the chapter of the monks, had begun to make an inquiry against him, he, fearing that he would be aggrieved, appealed to the Apostolic See. You, however, not deferring to the appeal, suspended him from the office of administration; and, after an inquiry was afterwards made in his absence, you shamefully dragged him, unwilling though he was, after you as far as the monastery of Ramsey, and made him swear upon the cross that he would follow you as far as London. Therefore, upon coming to London, he solemnly renewed the appeal that he had previously interposed, and obtained letters of commission to be directed to our venerable brother the Bishop of Winchester and his co-judges, which he delivered to a certain merchant to be carried. You,

however, caused him, as he was returning to England, to be seized at London and committed to prison in the monastery of Ely. On account of this, the merchant who was carrying the letters did not dare to come into England. At length, however, having been released from prison, he appealed to the Apostolic See. You, however, not deferring to his appeal, as before, pronounced against him the sentence of deposition itself and caused him, once deposed, to be thrust into prison.

But when he had been released from his bonds, he came into our presence and obtained letters to our venerable brother the Bishop of Durham and our beloved son Master John of London, that they should diligently inquire into the truth concerning the matters set forth, and, if the parties were willing, should terminate the cause itself harmoniously with the proper conclusion; otherwise, they should not delay in remitting the cause to us after it had been sufficiently instructed. The same abbot therefore maintained that all the aforesaid matters had been sufficiently proved before the same judges.

But our beloved son Master Honorius, Archdeacon of Richmond, your envoy, set forth on the other side that, when you once discharged the office of legation, you came to the monastery of Thorney in order to bestow upon it the favor of visitation; and, when you had inquired more diligently into the life of R. himself, his dilapidation, incontinence, and shameful conduct were established for you through the testimony of the monks. Therefore, having taken the counsel of prudent men, you suspended him from the office of administration, since, according to the canonical enactments, one suspected of dilapidation ought to be suspended from administration. Nor had the same abbot appealed at that time; nor, even if he had appealed, had he made known to you that he had appealed, since, as his witnesses assert, having left the chapter, he decided in a private conference that an appeal should be made. But when he afterwards appealed at London, you not only received the appeal interposed but also supplied expenses sufficient for its prosecution.

Then, when through your letters you had made known his enormities to our predecessor of good memory, Celestine, he admonished your fraternity that you should depose him from the office of the abbacy and, having committed him to prison, should detain him so long as his mandate did not again reach you. Therefore, fearing the sentence of deposition, he voluntarily renounced the abbacy in the presence of many bishops and other religious men; but, repenting a little afterwards, he entirely denied that he had renounced. Therefore, since you were his metropolitan, discharged the office of legation, and were specially delegated for this, following the form of the apostolic mandate you took care, because of the manifest character of the crimes, to impose perpetual silence upon him concerning the abbacy.

At length, when cognizance of your sentence had been delegated under the aforesaid form to the aforementioned Bishop of Durham and his co-judge, you proved before them by lawful witnesses that the same abbot had renounced the abbacy; that he suffered from the vice of incontinence; that he had alienated certain vessels of the monastery without the consent of the monks; that you had deferred to his appeal and supplied expenses to him as appellant; that, by the authority of the letters of our aforesaid predecessor, you had proceeded to his deposition because of the manifest character of the crimes and his voluntary cession; and that, by the special mandate of the same predecessor of ours, you had committed him to prison in the monastery of Gloucester, where he had formerly been a monk. Afterwards, however, when the judges themselves had reduced all the proceedings to writing and assigned a term to the parties, the same R. both withdrew from the suit in your hands and

voluntarily renounced the abbacy, and you received his renunciation at the great insistence of certain religious men.

But, although the often-mentioned R. had at first denied that he had renounced the abbacy, at length he nevertheless confessed it in our presence, adding that, because he had renounced while despoiled, his renunciation was not valid. Furthermore, since you had promised suitably to provide for him but were unwilling to fulfill the promise, he was not bound to hold as ratified what he had done. Moreover, he had been induced to renunciation by fear, since you had threatened him that, if he came to us with the judges' report, you would obtain from us that we put him in a cage.

Against this, however, the said archdeacon replied that it could not and ought not benefit the same R. that he had renounced while despoiled, inasmuch as it was not an adversary but rather the judge who had despoiled him. Moreover, the fear that the opposing party had alleged could not excuse him, since it ought not to have fallen upon a steadfast man. For what steadfast man would presume that at your wish we would thrust anyone into prison and exercise tyranny against those who prosecute their causes before the Apostolic See? Therefore, the said R. ought not on any occasion to have presumed that we would wish to exercise cruelty of this kind. Moreover, that his presumption was frivolous appeared from what was done afterwards.]

Therefore, although a judge does not always apply his mind to one kind of proof, but forms the movement of his mind from confessions, depositions, allegations, and other matters that are set forth in his presence, and judicial authority is so great that it must always be presumed in its favor until something against it is lawfully proved—wherefore, even if you had proved absolutely nothing against the aforesaid R. before the Bishop of Durham and his co-judges, nevertheless the sentence would have had to stand unless the adversary showed that it ought to be annulled—yet, because in addition to these matters his voluntary renunciation was established through certain letters of bishops and his own confession, we, with the counsel of our brothers, have decided that silence should be imposed upon him concerning the same abbacy.

[We will, however, that, out of regard for divine mercy, you cause suitable provision to be made for him from the revenues of the monastery of Thorney in some religious place. Let no one therefore, etc. Given at the Lateran, on the second day before the Nones of June, 1202.]

Chapter VII

Latin source headnote: One who has renounced beneficial letters is not for that reason deemed to have renounced an institution already made.

Celestine III.

Indeed, we remember that we enjoined, by our living voice and by letters, upon our beloved son I., cardinal-priest of the title of Saint Pudentiana, then legate of the Apostolic See, that, all contradiction and appeal being removed, he should take care to institute as a canon in the church of Poitiers our beloved son H., a subdeacon, who has served your church from the first flower of childhood; and he, obeying our mandates, instituted the aforementioned subdeacon as a canon there. You, however, showing reverence neither to us nor to the cardinal himself, did not take care to fulfill what the same cardinal enjoined upon you in his letters concerning the already-mentioned Hugh, nor even to

observe his suspension in any respect. But afterwards the same H., led by the counsel of certain of you, returned his letters to you and subjected himself to your mercy.

But because he is compelled to sustain loss from that from which he ought to have obtained mercy, we command that, notwithstanding the fact that with his letters he subjected himself to your mercy, within twenty days after the reception of the present letters, all delay, contradiction, and appeal being removed, you admit him fully and completely as a brother and canon according to the custom of the church; and, assigning him a stall in choir and a place in chapter, you take care thereafter to treat him with fraternal charity.

Otherwise, know that we have strictly commanded our venerable brother the Archbishop and our beloved sons the Dean of Bordeaux and the Dean of Saintes that, relying upon our authority, all delay, contradiction, and appeal ceasing, they fully execute this, striking contradictors with ecclesiastical constraint, and that they not postpone sending them, suspended from office and benefice, to the Apostolic See to answer for their disobedience and for the aforesaid suspension in no way having been observed, so that there, with punishment as their teacher, they may learn how dangerous and unworthy it is to oppose apostolic mandates; notwithstanding any letters obtained from the Apostolic See with the tenor of these letters suppressed.

Chapter VIII

Latin source headnote: A resignation of a benefice made into the hands of a layman is not valid; nevertheless, the one resigning is to be despoiled of the benefice.

Innocent III to the Archbishop of Nidaros.

As to what in doubtful matters—(*And below:* [cf. c. 30, On the Sentence of Excommunication, V.39.]) Those, moreover, who, voluntarily resigning into a lay hand an ecclesiastical benefice conferred upon them, received it anew from the layman, are to be despoiled of the same benefice, although the resignation of such persons made to a layman obtains no force. [But the altar, etc. (cf. c. 3, On the Consecration of a Church, III.30.) Given near Civita Castellana, on the sixth day before the Ides of October, 1198.]

Chapter IX

Latin source headnote: The Pope grants permission to resign to a bishop who cannot remain in his church without danger of death.

The same, to the Archbishop of York.

At the urgent supplication of our venerable brother the Archbishop of Ragusa, we have decided that he should be absolved from the care and solicitude by which he was bound to the church of Ragusa, namely because he could not remain there safely and, if he had access to it, danger of death threatened him. (*And below*:) But lest the same archbishop suffer a lack in temporal things to the reproach of our ministry, we earnestly admonish your fraternity and command [you] by apostolic writings that you preserve for his support the benefice that has been conferred upon him from royal liberality and your grant in the bishopric of Carlisle and in the church of Malebron. We have granted to him that he may exercise the episcopal office in that bishopric without the use of the pallium, while rendering reverence and obedience to you as metropolitan.

Chapter X

Latin source headnote: The weak, the ignorant, one conscious of guilt, the irregular, one whom an evil people hates, and one giving scandals may resign.

The same, to the Bishop of Cagliari.

Unless, when some time ago you entered the pastoral office for divine service, we believed that you had prepared your soul for temptation, and had prudently foreseen that it lies by no means within human frailty to be able to sustain, without the great assistance of God, the various afflictions of anguish that you knew you would suffer in that office, we would certainly fear that afterwards you had neglected to dash your little ones against the rock, and had allowed them to grow so strong against you that you are now scarcely able to resist their insistence as they suggest to you the resignation of the ministry you have undertaken. But because, as we believe, when you knew that you would fight against spiritual wickedness, admonished by the Apostle you put on the armor of God by which you might stand against the snares of the tempter, and, though inexperienced, you were not ignorant of the anguishes of pastoral solicitude, which, now perhaps experienced, you abhor, we do not know why you so insistently wish uselessly to abandon the governance you have undertaken, which you ought not altogether to have avoided undertaking usefully. For if in a resignation of this kind you promise yourself the fruit of a better life, you ought to know that you are not holier than the one sanctified in the womb; and therefore you ought not to desert the ministry of preaching already undertaken, since he at length received the word of God to be preached, whose bearer he had [before] refused to become.

§ 1. But if perhaps for the sake of humility you seek to descend from the pontifical summit, and strive, contrary to the decision of the heavenly will, to abandon through that humility the prelacy given to you, by that very fact you seem wrongly to raise the head of humility, because you show yourself too obstinate in the purpose of resigning. For then you will preserve true humility in yourself, when through it you both flee an exalted place and through obedience do not relinquish it. Therefore, our venerable brother in Christ, we will you to consider that these are the grounds through which a bishop may seek permission to resign the pastoral office: consciousness of crime, weakness of body, defect of knowledge, malice of the people, grave scandal, and irregularity of the person. But in all these discretion must be employed and caution observed.

§ 2. For because of consciousness of a crime, permission to resign the pastoral office may be sought, and perhaps not because of just any crime, but only because of one on account of which the execution of that office is impeded even after penance has been performed. For since the Lord declares that, at whatever hour a sinner shall have been converted, he will not remember any of his iniquities, and sacred scripture testifies that no one is without sin, it appears that no one ought to resign the pastoral office because of consciousness of just any crime; for if all whom consciousness of any fault accuses were to resign, perhaps few or none would remain in that ministry. For in many things we all offend, and, if we say that we have no sin, we deceive ourselves and the truth is not in us, because he mercifully excuses the one who wretchedly accuses himself.

§ 3. Another ground is weakness of body, on account of which someone may seek to be absolved from the burden of pastoral solicitude, a weakness that proceeds either from infirmity or from old age; yet not every such weakness, but only that by which he is rendered unable to execute the

pastoral office. For if the office of an undertaken service could be abandoned because of any bodily weakness, the Apostle would in vain declare that he glories in his infirmities. And someone burdened with old age ought not altogether to excuse himself from the care of pastoral governance, since sometimes the weakness of old age no more exhorts someone to resign than the moral maturity that is accustomed to exist in the elderly counsels him to remain in his office. For on behalf of such persons the Apostle says of himself, "When I am weak, then I am stronger," because sometimes infirmity of body increases strength of heart.

§ 4. Because of a defect of knowledge also, someone can very often seek resignation from the pastoral office. For, since knowledge is especially necessary concerning the administration of spiritual things and useful concerning the care of temporal things, the prelate, who ought to govern in both respects the church committed to him, beneficially renounces it if he is ignorant of the knowledge by which he may govern it. For, since he has to teach his subjects what they ought to do and what to avoid, he will neither teach them well what he himself has not learned to flee, nor practice what he has not learned. "For you," says the Lord, "have rejected knowledge, and I will reject you, that you may not discharge the priesthood for me." Although eminent knowledge is to be desired in a pastor, nevertheless competent knowledge is to be tolerated in him, because according to the Apostle, "knowledge puffs up, but charity builds up"; and therefore the perfection of charity can supply the imperfection of knowledge.

§ 5. Moreover, because of the malice of the people a prelate is sometimes compelled to withdraw from their governance, [and] this when the people are so stiff-necked and are found so obstinate in their rebellion that he is unable to make progress among them, but, because of their hardness, the more he strives [to make progress], the more by a just judgment he is permitted to fail, the Lord saying through the Prophet: "I will cause your tongue to cleave to your palate, because it is a provoking house"; and the Apostles are read to have said to the Jews: "Behold, we turn to the gentiles, because you have made yourselves unworthy of the word of God." Nevertheless, a pastor ought not to desert his flock for just any fault, lest perhaps he be compared to the hireling who sees the wolf coming, leaves the sheep, and flees; but with the permission of his superior he can at last not so much flee timidly as withdraw providently, when the sheep are turned into wolves and those who ought humbly to have obeyed now irrevocably contradict. Although such persons are to be punished severely for their crime, nevertheless they are usefully to be tolerated for a time, because he draws blood who presses the nose too hard.

§ 6. To avoid a grave scandal also, when it cannot be quieted otherwise, a bishop is permitted to seek resignation, lest he seem to affect temporal honor more than eternal salvation, mindful of what the Apostle says: "If food scandalizes my brother, I will not eat flesh forever," lest I scandalize my brother. But one must distinguish subtly between scandal and scandal, as the Lord himself distinguished. When the Apostles had said to him, "Do you know that the Pharisees are scandalized upon hearing this word?" he answered: "Let them alone; they are blind and leaders of the blind." Elsewhere, however, he said: "Whoever scandalizes one of these little ones who believe in me, it is expedient for him that an ass's millstone be suspended from his neck and that he be submerged in the depth of the sea." For although it is necessary that scandals come, nevertheless woe to him through whom scandal comes.

Irregularity of the person, moreover—as, for example, if someone is a bigamist or the husband of a widow—is a ground on account of which someone can seek permission to resign the pontifical dignity, the Apostle attesting when he says: "A bishop ought to be the husband of one wife." Nevertheless, permission to resign ought not to be granted because of every personal irregularity to one who has ministered regularly, as, for example, if he was not born of a lawful marriage. For, although he could not have kept silent about an irregularity of this kind, nevertheless, if both the fault and its cause lie hidden, a dispensation can be granted to one who has laudably fulfilled his office, after a suitable penance has been enjoined upon him, no less usefully than mercifully. "I am," he says, "a jealous God, visiting the sins of the fathers upon the sons to the third and fourth generation in those who hate me," that is, in those who imitate the paternal hatred against me. From this it is clear that, for those who do not follow their fathers' vices, their own virtues can assist them in such matters, with this moderating exercise of discretion employed: that a distinction be made among *nothi* and *manzeres*, natural children and *spurii*.

But because vices very often falsely represent themselves as virtues to a mind insufficiently provident, you ought subtly to consider whether the purpose of resigning that you appear to carry so fervently in your breast is worthy of God's hatred or love. For if you were seeking to resign for any of the foregoing grounds, we would grieve equally over both the ground and its effect. But lest detestable impiety drive you to resignation beneath the covering of undiscerning piety, we will you to consider that there are also other grounds on account of which someone badly seeks, and still worse desires, to resign an office of this kind.

For if from pusillanimity—perhaps so that he may lay aside labor or escape persecution—or, far be it, from vanity—so that he may more fully have leisure for idleness or indulge in pleasures more freely—someone wishes to desert pastoral care, he does not merit to be absolved from it, although through vanity of this kind, as one who sins mortally, he renders himself unworthy of it; rather, he ought to take pains that, after vanity has been laid aside, he make satisfaction for the sin.

Indeed, we believe another ground for resignation to be utterly detestable: namely, if someone wishes to depart from the pontifical dignity so that he may capture human glory, as though he were choosing to be abject in the house of the Lord rather than to dwell in the tabernacles of sinners; or so that he may not lose the worldly honor that he acquired through hypocrisy, whether because his pretense is now beginning to be revealed, or because his fervor grows lukewarm from any cause and he does not wish it to appear either that he was evil or that he is becoming so, and therefore beneath the pretext of religion he wishes to cover his depravity, so that, as though deserting Martha, he may embrace Mary and, disdaining Leah's weak eyes, may desire Rachel's beauty.

But what if he wishes to resign for this reason: that in a time of prosperity, while fortune smiled, he appeared to minister laudably because all things were succeeding prosperously for him, but when a time of adversity threatens, he fears that, if adverse things occur by any chance, they will be imputed to his negligence? Plainly, if for this reason he seeks to resign, he can be compared to an improvident sailor who, when the sea lay calm, worked the rudder of the ship without much labor, but, when a storm arises, abandons it and allows it to go down into the deep.

We also utterly detest that ground of resignation if perhaps a bishop wishes to resign so that another may succeed him, whether with a view to a price or from carnal affection, or so that, when one worse than himself has succeeded him, he himself may be exalted as though the best. Moreover, we reject

and condemn as an impiety the claim that a bishop, because of worldly occupations and secular solicitudes, cannot exercise the pontifical office without crime, since the Church venerates many saints who administered spiritual and temporal things together. Nevertheless, the left hand ought to be under the head and the right hand in the embrace.

But we also will you diligently to consider lest perhaps through this purpose of your disposition you wish to become one of those concerning whom it is said through the Prophet: "The sons of Ephraim, bending the bow and shooting arrows, turned back on the day of battle," when instead you ought to set yourself as a wall for the house of Israel against those ascending from the opposite side, because according to the pronouncement of Truth it is not the one who has begun, but the one who has persevered, who will be saved. Take more diligent care lest you place a stain upon your glory, not only before men but also before God, because beneath this cloak you will not be able to conceal yourself—not merely before God, who searches the reins and hearts, but not even before men, who suspect such things from probable conjectures. And prudently consider that, according to the pronouncement of the wise man, the spirit of discipline will flee the fictitious and will take itself away from thoughts that stand without understanding.

If, however, you fear to incur the burden of difficulty in protecting the liberty of the Church, you ought not on that account to desert the honor of the prelacy. Consider diligently lest perhaps by a just judgment you are being tempted by him who is the tempter to evils, so that it may be proved whether you are willing to make satisfaction in that matter in which perhaps you transgressed. But one who scorns or neglects to make satisfaction for a transgression stores up wrath for himself on the day of wrath, when God will reveal the hidden things of darkness. Behold, indeed, we have brought a mirror before you, that you may contemplate yourself in it and, having searched your conscience, may recognize from what ground you importunately seek permission to resign. For we—as the Most High knows—are ignorant why you persist in the purpose of resigning, since neither infirmity of body, nor length of age, nor defect of knowledge, nor malice of the people, nor irregularity of person renders you unfit, nor do you confess that you have consciousness of a grievous crime.

§ 7. But if you desire resignation for other grounds, favor is not to be shown to you as you seek it in this matter, since a request of this kind appears not to be discreet. For, to omit as very well known the fact that idleness and pleasure are the weapons of the ancient enemy for capturing wretched souls, you ought not to desert your bride because of the anguishes of labor or assaults of persecution, to whom, by striking your hand with a stranger, you joined yourself by an intervening pledge, knowing that "blessed are those who suffer persecution for justice," because, when they have been proved, they will receive the crown of life that God has promised to those who love him.

§ 8. But you will say that "the spirit breathes where it wills, and you do not know whence it comes or where it goes," and therefore there is no one who can search out the paths of that spirit; and those who are led by the Spirit of God are not under the law, because where the Spirit of God is, there is liberty. Therefore, if permission to resign has not been given to you by man, nevertheless you will resign, because liberty to resign has been given to you by God. Certainly you are foolish if you think thus. For how is one led by the Spirit of God who acts against the Spirit of God? For if the matters we have set forth above are true—indeed, because they are indubitably true—without doubt one who attempts any of these matters against the truth acts against the Spirit of God, because he is the Spirit of truth.

§ 9. But if you say that perhaps there is another hidden ground on account of which the will to resign is inspired in you from heaven, we answer in turn: how do you know that such inspiration is heavenly? Do you not remember what that glorious pontiff said when he began suddenly to be deprived of the strength of his body? “Lord,” he said, “if I am still necessary to your people, I do not refuse the labor; let your will be done!” He followed the example of the one who said: “I desire to be dissolved and to be with Christ, but to remain in the flesh is necessary for you.”

Therefore, because we have distinguished for you diverse grounds in this matter and are ignorant for which of them you desire to resign, we have decided to commit you to yourself, so that, judging yourself from the tribunal of your own mind, you may see whether you can satisfy the desire of resigning in such a way that you may withdraw without fault from the care of the flock committed to you. For if by resigning you desire to benefit yourself alone, without doubt you subtract as much from your own benefit as you fail to expend upon others what you could expend, because then you would acquire greater gains for your soul when, without your own salvation, you procured the salvation of many. For it is of greater merit for someone to gain very many for God together with himself than to seek his own salvation without those whose salvation is known to pertain to his care.

§ 10. Indeed, however great the flower of virtues with which you shine, if you do not have charity in yourself, you are proved to have nothing. Under what pretext of virtue, then, do you seek to lay aside the burden of pastoral solicitude, which can scarcely be deserted without loss of charity? “For there can be no greater charity than that someone lay down his life for his friends.” And since because of this charity it befits you to lay down your life for your subjects, on no occasion, provided that you can benefit them—even if not all, nevertheless many—does it befit you to excuse yourself from their governance. For if you put forward labor as the ground, the Apostle's example will sustain you. He counsels you not to flee labor of this kind when he asserts that he labored more than the rest for the common salvation; for although the result does not always follow the labor, nevertheless the labor itself is meritorious before God, according to what is written: “God will render the reward of the labors of his saints.”

But grant that you have labored greatly until now and, with the same Apostle, can say that you have fought the good fight: nevertheless, in order that thereafter the crown of justice may be laid up for you, it befits you to complete the course of a perfect work. For however much, amid the labors of the anguishes that accompany the pastoral office, you number for yourself laborious nights and, like a wearied stag, desire the shade of rest; however much, distressed amid the squalors of the road, you are drawn by love of the homeland and, like a hired laborer who has completed his service, anxiously await the end of your work; nevertheless, it is expedient for you to perfect virtue in infirmity and crown your struggle with perseverance. And, knowing that you struck your hand with a stranger when you received the souls of the flock committed to you into your own soul, you ought not so to desire for yourself the harbor of repose that you allow the children who have sailed with you until now to be tossed, without the aid of an oarsman, upon this great and spacious sea in fear of shipwreck.

§ 11. Nor should you think that Martha chose an evil part, she who was busy about many things, because Mary chose the best part, which will not be taken away from her. For, although the latter is safer, the former is nevertheless more fruitful; and, although the latter is sweeter, the former is nevertheless more useful, since, in fruitfulness of offspring, Leah's weak eyes are preferred to Rachel's

beauty. Yet you can be both contemplative and active together at once, after the example of the lawgiver, who at one time ascended the mountain so that there he might see the glory of the Lord with greater freedom, but at another descended into the camp so that he might provide for the necessities of the people with greater usefulness. Therefore, it is more easily permitted that a monk ascend to the prelacy than that a prelate descend to the monastic life.

§ 12. We therefore admonish you that, abhorring that expression of Davidic imprecation and fearing lest it be applied to you through the effect of your deed—the imprecation that the days of the impious man become few, that another may receive his bishopric—you not refuse the labor of pastoral governance. And, casting your thought upon the Lord, determine nothing concerning yourself against the will of the Most High, who, when he sees that you are necessary to his people, perhaps would bear it grievously if it should happen that he himself was neglected by you; lest perhaps he should scorn to receive you with Mary at his feet, when you had scorned solicitously to minister with Martha to him when he turned aside to lodge with you.

This also ought to establish you more firmly in the purpose of ministering: since you have until now ministered laudably in the church committed to you, if—which God forbid—when you resign, another less useful should be assumed to it, assuredly you would be disturbed not a little in the very repose that you desire, when, where you had exercised your ministry well, you would see not without sorrow the failure of a useless minister. And it would happen that you would recognize that as much had been lost to you in the citadel of contemplation as you would see, not without your confusion, had through you been withdrawn from the church over which you preside.

But because, both personally and through your envoys and letters, you have already insisted too much before us in seeking permission to resign, behold, we have decided to leave you to yourself. The grounds on account of which one ought to resign or not to resign having been distinguished for you, if you persevere in a purpose of this kind because of some useful and honorable ground, you may resign with our permission—although you should know that this is exceedingly grievous and troublesome to us. Otherwise, you should know that permission to resign is altogether forbidden to you by apostolic authority, because, even if you have wings by which you strive to fly away into solitude, they are nevertheless so bound by the chains of the commandments that you do not have free flight without our permission. But if, finally, your will should drive you to fly, we will and command that you cause our letters to be recited in the hearing of your chapter. [Etc. Given at Rome, at Saint Peter's, on the Kalends of March, in the ninth year of our pontificate, 1206.]

Textual note: In section 9 the source prints *sine tua salute* (“without your own salvation”), a reading also present in the Friedberg-derived reference text but difficult in context; the following sentence instead speaks of gaining many for God “together with oneself.” The translation retains the printed reading rather than silently emending it.

Chapter XI

Latin source headnote: A bishop who resigned his bishopric because of a crime and passed into the religious life cannot be reassumed to a bishopric; it is otherwise if he resigned because of persecution, infirmity, defect of knowledge, simony committed without his knowledge, or another similar ground.

The same, to the Bishop of Faenza, elected Archbishop of Ravenna.

After your translation to the church of Ravenna, when our beloved sons the provost and canons, the abbots and *primicerii* of Faenza, and the entire clergy of the city, as we have learned through their letters, had unanimously conferred upon our beloved son I., a priest and their fellow canon, free authority to elect, he, after the grace of the Holy Spirit had been invoked, chose our beloved son I., a canon of Saint Fridianus of Lucca and formerly Bishop of Sarno, to be postulated as Bishop of Faenza. Through his circumspect solicitude—he who first as canon and afterwards as provost conducted himself laudably in the church of Faenza—it is hoped that benefits will come to the same church in many ways. Moreover, after the prior of Saint Fridianus, our beloved son, had been consulted concerning this and his consent obtained, the provost and the others named above humbly sought that the same postulation be approved by us.

But at first sight a chapter of the Council of Constantinople seemed to oppose a postulation of this kind. In it, it was established that whoever descends from the pontifical dignity to the life of monks and a place of penance shall by no means rise again thereafter to the pontificate. Therefore, contrary to the said council, since it is one of the four principal councils that the catholic Church venerates as the four Gospels, their postulation seemed in no way admissible.

§ 1. But certain special cases are found in which, notwithstanding the aforesaid council, one who has chosen the monastic life can lawfully be assumed to a bishopric again. For if anyone, while the fury of persecution rages or bodily ill health impedes him, when he cannot make progress in pastoral governance, descends with the authority of his superior to the monastic life, he will be able, when the impediment of persecution or sickness ceases, to rise again to the episcopal dignity.

§ 2. Likewise, if anyone, because of a defect of learning, lest as a blind man he offer guidance to a blind man, has abandoned the place of governance by apostolic authority and betaken himself to monastic leisure, and through the exercise of reading has found the pearl of knowledge, without doubt he will be able, when called anew by the Lord, to ascend again to the pastoral chair.

§ 3. Again, if anyone, through the cupidity of his relatives but entirely without his knowledge, has obtained a bishopric, and, once this is discovered, relinquishing the bishopric itself with his superior's permission, has chosen regular observance, although he cannot afterwards return to the same bishopric according to the canonical enactments, nevertheless he can lawfully be reassumed to another.

§ 4. Although in these and similar cases one who, having relinquished a bishopric, chose the monastic life can rise again to the pastoral office, nevertheless nothing in these cases is understood to be attempted contrary to the aforesaid council, which speaks in the case in which someone, abandoning a bishopric because of some crime, descends to the monastic life for the sake of penance. Hence certain persons have said that the chapter named above speaks in the case in which someone, because of a crime of which he had been convicted or which he had confessed, was deposed from the episcopal dignity and shut up in a monastery to perform penance, or when someone, because of a grave crime for which he could not worthily perform penance while retaining the bishopric, obtained permission to resign and chose the monastic life. Others assert that the aforesaid chapter is to be understood so that he cannot rise again by his own action—that is, reclaim as though it were owed what he relinquished in such a manner—although he can be elected, especially if he resigned only the place and not the order.

§ 5. Therefore, since it could not be fully established for us for what ground the aforesaid I. once resigned the bishopric—for in our letters transmitted concerning this, only this was expressed to him: that we, having received his letters concerning his resignation and commending in the Lord his purpose, because he preferred the salvation of his soul to temporal honor, absolved him from the burden of pastoral solicitude—although it was suggested to us very recently by a certain canon of Saint Fridianus that the said Joachim sought permission to resign for this reason: that it had come to his knowledge that certain relatives of his, so that he would be elected bishop, had given certain things, though few, we command your fraternity by the authority of the present letters that, after the truth concerning these matters has been most diligently investigated, if it should be established for you that the same I. resigned the aforementioned bishopric because of one of the grounds set forth above or grounds similar to them, you, by our authority and with the obstacle of any contradiction and appeal removed, provided that necessity or utility requires it, grant him permission to ascend to the governance of the church of Faenza.

This is especially so if what both the aforesaid provost and canons of Faenza and the prior and chapter of Saint Fridianus expressed to us in their letters is supported by truth: namely, that the said I. resigned only the aforementioned place and not the order, or even the dignity. For then it would have to be very strongly presumed that he migrated to the regular life not because of any crime committed by him, but for the sake of performing penance, especially since, after the resignation, the Apostolic See would have permitted him, if entangled in such a crime, much less than before to minister in the pontifical order. Otherwise, since it would be exceedingly harsh to admit a postulation of this kind contrary to so solemn a council, you shall enjoin upon the aforesaid provost and canons that they elect another suitable person as their pastor. [Given at the Lateran, on the fourth day before the Ides of February, in the eleventh year of our pontificate, 1208.]

Chapter XII

Latin source headnote: One who sought permission to resign is compelled to resign once he has obtained it.

The same, in the General Council.

Certain persons, insistently seeking permission to resign, omit to resign once it has been obtained. But since in seeking resignation of this kind they seemed to have regarded either the advantages of the churches over which they preside or their own salvation, and we do not will that either of these be impeded by the persuasions of certain persons who seek the things that are their own, or even by any fickleness, we decree that they are to be compelled to resign.

Chapter XIII

Latin source headnote: One who submits himself to the grace of his adversary does not renounce his right.

Honorius III, to the Dean of the cathedral church and Master R., Cantor of Saint Denis of Liège.

Coming to the Apostolic See, I., a poor subdeacon, appeared and set forth in our presence that, when Pope I. of good memory, our predecessor, had by his letters given a mandate to our beloved son the Abbot of Emenco in the diocese of Trier and to the cantors of the cathedral church and of Saint Paul

at Trier that, if nothing canonical stood in the way, they should, with the obstacle of appeal removed, assign to the same I. a prebend in the church of Saint Florentin at Koblenz, which James, dean of that church, had resigned into his hands through his letters, the same John showed the letters themselves to the aforesaid dean and the others, but the same dean, perhaps repenting of the resignation, concealed the abovementioned letters. At length, after the aforesaid letters had been restored to the same John, he presented them to the named judges so that they would execute the apostolic mandate.

And when those judges wished to fulfill the apostolic mandate, certain canons of the aforementioned church opposed them, saying that the aforesaid subdeacon had renounced his right that belonged to him from those letters. Therefore, when the said subdeacon denied this, the already-mentioned canons produced certain witnesses to prove it. Since through them it seemed to have been proved that he had committed himself to the grace of the chapter, two of the aforesaid judges—namely, the cantors of Trier—decreed by sentence that the same John could no longer use the abovementioned letters, because the same I. had thus committed himself to the grace of his adversary, through which he seemed to have renounced the right belonging to him from those letters.

The same I., appealing from that sentence, although he had also appealed previously, fixed the most recently past vigil of Epiphany as the term of his appeal. When the same I. had come on that date and narrated to us the sequence of the fact as expressed above, we granted him as auditor concerning this our beloved son Peter of Colle Medio, our chaplain. But when his adversary had not come, though awaited for two months and more, nor did any sufficient authorized respondent appear for him, at length someone having letters to contradict and impetrate appeared before the same auditor. When he was believed in law to be insufficient to conduct the cause, we gave a mandate to the aforesaid auditor, who reported all these matters to us, that he consult some of the brothers concerning this and proceed in the cause according to their counsel. The same auditor, having taken the counsel of our beloved son T., cardinal-priest of the title of Sabina, and also of others, as justice required annulled by sentence the sentence of the aforesaid judges.

We therefore hold as ratified and firm the sentence of the aforementioned chaplain, and command you by apostolic writings that, revoking as void whatever you find was attempted after the appeal interposed to us, notwithstanding the sentence of the judges of Trier, you, by apostolic authority and with the obstacle of appeal removed, confer the aforesaid prebend upon the same subdeacon, unless some other canonical objection has been made and proved why this ought not to be fulfilled.

Chapter XIV

Latin source headnote: If a prelate absolves his subjects from obedience, he does not for this reason renounce the prelacy.

The same, to the Archbishop of Trier.

The letters of your fraternity read before us contained that the Abbot of Saint Peter of Toul, whom you commend for uprightness of conduct and life, humbly confessed to you that, when he was laboring under so grave an illness that his life was despaired of, on the counsel of a certain rival of his —in whom he trusted, since he did not believe him to be a rival—in the presence of certain of his monks, after revoking any sentence of excommunication that he had pronounced against any one of them, he absolved his monks from the obedience in which they were bound to him, and summoned

the diocesan bishop so that he might resign the abbey into his hands. Nevertheless, having employed sounder counsel, he did not do this; and, although the same abbot was afterwards restored to health, all and each of the convent, when required by him in chapter, promised obedience and reverence.

Nevertheless, doubting about the fact that he had acted thus, he sought from you that you should counsel his salvation concerning this. On account of this, since, after counsel of those skilled in law had been taken concerning it, different persons thought differently, you sought our counsel as to whether the same abbot had resigned by this act. But we do not see that by such an act alone the same abbot resigned his governance.

Chapter XV

Latin source headnote: An exempt abbot cannot resign without the Pope's permission.

Gregory IX, to the Bishops of Agde and Uzès.

Our beloved sons, the convent of the monastery of Saint G. of the Deserts, belonging immediately to the Roman Church, have made known to us by their letters that their abbot, feeling himself insufficient for the burden of governing the abbey, resigned into their hands. They also canonically elected as abbot our beloved son G., a monk of Saint Victor of Marseille, supplicating that, sparing their labors and expenses, we cause their election to be confirmed in those regions.

Therefore, since the said abbot could not resign without our permission, we, decreeing both the aforesaid election and resignation to be void and empty, command your discretion by apostolic writings that you cause the abbot himself to be restored to his place and, after he has been restored fully, receive his resignation in our stead.

Title X: On Supplying the Negligence of Prelates

Chapter I

Latin source headnote: If the diocesan bishop, when requested, is unwilling to bless a Cistercian abbot, the abbot himself will be able to bless his monks.

Alexander III, to the Cistercians.

We establish, furthermore, that if a bishop, having been requested a third time with humility and devotion, as is fitting, should perhaps refuse to bless your substituted abbots, it shall be permitted to those abbots to bless their own monks and to exercise the other things that pertain to an office of this kind, until the bishops themselves reconsider their hardness and do not refuse to bless the abbots [who are to be blessed]. [Indeed, etc. Given at Benevento, on the fourth day before the Nones of July, in the second indiction, 1169.]

Chapter II

Latin source headnote: Regulars cannot convert to their own uses churches in which they possess the right of patronage; and if, when those churches are vacant, they do not present rectors to them within the time of the Lateran Council, the superior will ordain those churches.

Clement III.

As your fraternity has made known to us, certain monks and canons regular, having in your bishopric churches that pertain to their presentation, strive to assign them to their own uses, and, when they have become vacant, are unwilling to call persons [suitable] to them. Rather, on the occasion of a grant by certain bishops, they institute and remove vicars in them according to their own will, so burdening those admitted with pensions that they can neither competently serve the churches in their excessive poverty, nor answer to the bishop in episcopal dues, nor bestow hospitality upon travelers, as is fitting.

But, unwilling that the due and ancient condition of a church be overturned through anyone's indolence, we command that, unless the aforesaid churches are exempt from your jurisdiction, you take pains reasonably to correct the aforesaid excesses; and, unless the aforesaid persons present suitable persons to you for the vacant churches within the time established in the Lateran Council, from then on it shall be permitted to you, appeal being removed, to ordain in those churches rectors who know how both to preside over and to benefit them, yet in such a way that from this no prejudice is engendered for the patrons in the future. [Given at the Lateran, on the sixth day before the Kalends of March, in the second year of our pontificate, 1199.]

Textual note: The source attributes the decretal to Clement III but dates it to 1199, during the pontificate of Innocent III. Both printed statements are preserved rather than silently reconciled.

Chapter III

Latin source headnote: A superior supplies the negligence of an inferior in conferring benefices if the time of the Lateran Council has elapsed, and a collation afterwards made by the inferior is not valid.

Innocent III.

Although our beloved sons Master H., Archdeacon of H., and R., procurator of R. of Saint Cadimundus, litigated for a rather long time before us concerning the archdeaconry of Richmond, nevertheless it was afterwards made known to our ears that it belonged to neither of them by right, inasmuch as it had been granted to neither within the time defined in the Lateran Council.

Therefore, lest we seem to neglect our own right, we who sustain others in their justice, we command your discretion by apostolic writings that, after summoning the same men so that they may set forth whatever they decide should be set forth in opposition, you inquire more diligently into the truth. And if it is established for you that the archdeaconry of Richmond had been vacant for a year, but that the period of six months during which the grant pertained either to the archbishop or to the chapter was computed not from the vacancy but from knowledge of it, since, because the Archbishop of York has no other superior, the grant had from that time devolved upon us, you shall, with the obstacle of appeal removed, impose silence upon both men concerning it, publicly declaring that the archdeaconry pertains to our grant, and decreeing void and empty whatever anyone should afterwards presume to ordain concerning it.

Chapter IV

Latin source headnote: If the one to whom the collation of a benefice belongs confers after the time of the Lateran Council has elapsed, the collation is not valid, unless it is tolerated out of mercy.

The same, to Master P. of Châteauneuf and R., monk of Fontfroide, legate of the Apostolic See.

We have received the letters of your discretion [in which you implore an apostolic response concerning those matters that are doubtful for you, namely], that, when in certain churches subject to your legation certain benefices and dignities had been vacant for so long that both the prelates and the chapters were deprived of the right of instituting according to the tenor of the Lateran Council, after your arrival became known [to them], they presumed to institute less suitable persons in those benefices.

Hence, although you received counsel from men skilled in law that by apostolic authority you should annul such institutions, made by those to whom it did not belong and who by their own fault had deprived themselves of the right of instituting, you first decreed that you would have our counsel in this. You set forth, furthermore, etc. We therefore, responding briefly to your inquiry, command your discretion by apostolic writings that, if you know the benefices or dignities themselves to have been assigned to suitable persons, through tolerance you permit them to be possessed peacefully by those persons. Otherwise, removing the persons themselves entirely from them, you, supported by our authority, shall not delay in ordaining them as quickly as possible with suitable persons, [with no obstacle of contradiction or appeal], [the contradictors, etc. Given at Rome, at Saint Peter's, on the eighth day before the Ides of December, in the seventh year, 1204.]

Chapter V

Latin source headnote: The one to whom the collation of a benefice pertained in the first place will not be able to confer it after the time of the Lateran Council has elapsed.

The same, to the Bishop of Samo.

Our beloved son P., cardinal-priest of the title of Saint Marcellinus, having been granted as auditor to S. and R., the procurators of P. and G. appearing at the Apostolic See, the same treasurer set forth before him that, when in the church of Salamanca, in which the election of the cantor belongs jointly to the bishop and chapter, the cantorship was vacant, the said chapter had rather often admonished the bishop that he should assemble together with it to celebrate the election of a cantor. When that bishop neglected to do this within the period of six months, the chapter, desiring to use its right, elected as cantor in the chapter of the aforementioned church, as is customary, the above-mentioned Paschasius, a canon of that place, appealing lest anything be done to the prejudice of the same election. The above-mentioned treasurer sought that this election be confirmed by apostolic authority and that the election that our venerable brother the Archbishop of Compostela had made after an appeal of this kind concerning G., a cleric entangled in many crimes and at that time bound by the bond of excommunication, be annulled as less than canonically celebrated.

But the said Dominic set forth on the other side that, after the period of six months had passed, within which the election of the cantor belonged to the bishop and chapter, the dean and certain canons of Salamanca, without consulting the bishop, the archdeacon, and certain canons who were present in the city, presumed to elect very foolishly and inordinately—not at the customary hour or in the chapter according to custom, but rather in the church, with certain laymen having been called. And when they were unwilling to approach the presence of the already-mentioned archbishop, who had summoned them on account of this, he, understanding that the authority of electing had

devolved upon him according to the statute of the Lateran Council, elected the above-mentioned G. as cantor and caused him to be corporally invested with the cantorship.

Afterwards, however, the dean and his accomplices, making no mention to us of these matters and suggesting that the bishop—who, though admonished rather often, had been unwilling to elect within six months, to the detriment of the church—had, after the cantor who had been instituted by the same dean with the greater part of the chapter was despoiled, instituted another as cantor, obtained our letters to the dean, archdeacon, and archpriest of Ávila. When, by the authority of these letters, the above-mentioned G. had been summoned by those judges, he prohibited them from proceeding against him by the said letters, since no mention was made in them of his election made by the archbishop; and, both because of this and [also] because he had been cited peremptorily to distant places by the first citation, and also because the judges were related in the line of consanguinity to certain of the electors of the said Paschasius, he appealed to the Apostolic See. But the judges nevertheless, going to the church of Salamanca, contrary to justice inducted the often-mentioned P. into possession of the cantorship as a measure for preserving the matter.

Therefore, when the procurators themselves had litigated for some time before the same cardinal concerning these and other matters, and he had faithfully reported to us what had been set forth before him, because it was established for us that the dean of Salamanca and his followers, after the period of six months had elapsed—within which the bishop and chapter, insofar as it belonged jointly to them, had neglected to proceed to the election of the cantor—celebrated the election of the above-mentioned P. less than canonically, we decree that election void and empty. We also decree that the appeal interposed by the dean and his supporters could in no way impede the act of the archbishop, to whom the authority of electing had already devolved.

But because certain matters were objected against the person of G. himself, concerning which full proof could not be made for us, [we command your discretion by apostolic writings] that, unless some canonical impediment stands in the way of the already-mentioned G., you confirm the election made concerning him, with the obstacle of appeal removed, causing him to enjoy peaceful possession of the same cantorship; the contradictors, etc. [Given at the Lateran, on the fifth day before the Kalends of November, in the thirteenth year, 1210.]

Title XI: On the Times of Ordinations and the Quality of Those to Be Ordained

Chapter I

Latin source headnote: Sacred orders ought not to be conferred on Sundays or on the Saturday of Pentecost by anyone other than the Pope.

Alexander III, to the Bishop of Bath.

Moreover, let it be permitted to no one except the Roman Pontiff to ordain subdeacons on Sundays, although they have permission on these days to celebrate the consecration of virgins dedicated to God and the conferral of minor orders. Indeed, on the Saturday of Pentecost it shall not be permitted to anyone to celebrate sacred orders, since they are celebrated in the following week after the grace of the Holy Spirit has been received.

Chapter II

Latin source headnote: A custom that sacred orders are conferred outside the established times is not valid.

The same, to the Bishop of Hereford.

Indeed, concerning the fact that you said it is customary in certain churches of Scotland and Wales, at the dedications of churches or altars, to promote clerics to sacred orders outside the fasts of the Four Times, we signify to your prudence that that custom, as hostile to ecclesiastical institution, is both detestable and utterly to be disapproved. And, unless the multitude and the ancient custom of the land were [the cause], those ordained in such a manner ought not to be permitted to minister in the orders they received. For among us those so ordained would be deposed, and those ordaining would be deprived of the authority to ordain. [But concerning that, etc.; cf. the following chapter.]

Chapter III

Latin source headnote: Minor orders can be conferred on feast days, but sacred orders ought to be conferred in the Four Times, or on Holy Saturday, or on the Saturday before Passion Sunday.

The same, to the same.

But concerning what you asked—whether it is permitted outside the fasts of the Four Times to promote some persons as doorkeepers, readers, exorcists, or acolytes, or even to promote subdeacons—we respond thus to your prudence: it is lawful for bishops to promote one or two persons to minor orders on Sundays and other feast days; but no bishop other than the Roman Pontiff is permitted to ordain anyone to the subdiaconate except in the Four Times, on Holy Saturday, or on the Saturday before Passion Sunday.

Chapter IV

Latin source headnote: A secret criminal can be admonished not to be promoted to orders, but ought not to be prohibited.

The same.

From the tenor of your letters we have learned that N., a cleric, transgressed to such a degree that, if his sin were public, he would be degraded from the order that he received and could no longer be promoted to higher orders. But because you said that his sin was secret and private, we command your fraternity by apostolic writings that you impose upon him a worthy penance and counsel him that, after part of the penance has been performed, he use the order received and, remaining content with it, ascend no further to higher orders. Nevertheless, because the sin is secret, if he wishes to be promoted, you cannot and ought not for any reason to prohibit him. [Given at Benevento, on the fourth day before the Kalends of May.]

Chapter V

Latin source headnote: A religious ought not to be ordained contrary to the prohibition of his prelate.

Lucius III, to the Archbishop of Tours.

Through your report it has reached our ears that certain religious, having zeal for God, desire to be promoted to higher orders, thinking that a greater reward is to be accumulated the higher the office that they, placed in a greater grade, have executed; but their prelates contradict their desires. Therefore, your fraternity decided to inquire whether those constituted in lower orders ought, according to the good pleasure of their prelates, to whom the promotion is displeasing, to abstain from higher orders, or whether they may be promoted despite the resistance of their prelates.

We therefore respond thus to your question: it is more honorable and safer for subjects, by rendering the obedience owed to their superiors, to serve in a lower ministry than, with scandal to their superiors, to seek the dignity of grades. Nor is the desire of the subjects to be fostered in this matter, since it may be that their prelates know secret matters committed by them, from which it is established for the prelates that those subjects cannot be elevated with their conscience safe, because the kingdom of God is acquired not in the loftiness of grades, but in the breadth of charity.

Chapter VI

Latin source headnote: A metropolitan is consecrated by all his suffragans, but a suffragan by three, at the metropolitan's command.

The same.

If an archbishop has met [his day of] death and another archbishop is to be ordained [having been elected], all the bishops of the same province shall assemble at the metropolitan see, so that he may be elected and ordained by them all. For it is fitting that the one who ought to preside over all of them be elected and ordained by all of them. The other bishops of the province, however, if it should be necessary, can, with the rest consenting, be ordained by three at the command of the archbishop; but it is better if he himself with them all elects the one who is worthy and all together consecrate the pontiff.

Chapter VII

Latin source headnote: It says the same as in the preceding chapter.

From the Council of Arles.

Let no bishop presume to ordain a bishop without the metropolitan's permission, nor a metropolitan bishop without three or two bishops of the same province, in such a way that the other bishops of the province are admonished by letters so that they may signify by their reply that they have consented. But if any doubt has [arisen] between the parties, the metropolitan shall agree in the election with the greater number.

Chapter VIII

Latin source headnote: One ordained outside the proper times is suspended until a dispensation is granted to him, and the one ordaining is punished.

Urban III, to the Archbishop of Pisa.

Since certain Sardinian bishops, as has been set forth to us on your part, have not paid certain persons money that they were bound by oath to pay, and a certain bishop of that land celebrated orders on the day of the dedication of a church, although that day was not established for this

purpose, and certain persons have also sometimes sworn that they ought not to speak to a brother or sister, father or mother, or furnish any assistance to them, your fraternity asked us what should be done concerning matters of this kind.

We, therefore, unwilling to deny what, with charity suggesting it, you appear to seek from us, respond to your discretion by the present letters that vengeance is to be taken against those bishops who transgressed their oath, more gravely to the extent that they are eminent in greater dignity and that by their example others could more easily be incited to similar acts. You ought, moreover, to correct by canonical discipline the bishop who celebrated orders on a day on which he ought not to have done so, and to render those ordained unable to exercise the orders received for so long as they do not obtain from us or our successors the grace of restoration. But those who swear not to speak to father, mother, sister, or brother, or to show them the assistance of humanity, are to be absolved from observance of that oath, since it is unlawful and contrary to all reason, although a suitable penance is to be enjoined upon them for having sworn wrongly.

Chapter IX

Latin source headnote: Greeks ought not to be ordained by Latins, nor conversely, if they differ in the rite of ordaining.

Celestine III, to the Archbishop of Otranto.

Since, according to ecclesiastical rules and the institutions of the holy Pontiffs, sacred orders are to be conferred at certain times, certain Greek bishops, applying observance of their rite and custom to Latin clerics, indiscriminately promote them to sacred orders, which ought not to be conferred except in the Four Times. Indeed, as we learned from the report of John, the bearer of the present letters, when he had been presented to a certain Greek bishop by a certain lord whom he had served, so that he might celebrate divine offices in that lord's chapel, the same Bishop Cathamarsenis promoted him to the priesthood. His diocesan bishop afterwards believed that he should be suspended from the execution of the office or of the order received in such a manner.

That custom is indeed hostile to ecclesiastical custom, detestable, and utterly to be disapproved; and, unless the multitude and ancient custom were the cause, those so ordained ought not to be permitted to minister in the orders they received. For among us those so ordained would be deposed, and by the censure of the canons those ordaining would be deprived of the authority to ordain.

But because, as is said, in the regions of Calabria Latins are ordained by Greeks and Greeks by Latins according to the observance of the institution of each, and because your fraternity will be better able to discern whether this has been observed from antiquity, we have decided to commit the judgment of the same John to you. We command by apostolic writings, and by the authority of the present letters grant you power, that, after the truth and the observance of the custom have been more diligently learned—if any custom concerning these matters has been received by Latin clerics and approved until now—or if it should appear to you that you should discern otherwise concerning John himself, you do not delay in establishing, with the evasion of appeal ceasing, what you can establish with the salvation of his soul. You shall consider very carefully whether he is to be reordained or ought, without danger to his soul, to celebrate in the order thus received, with the addition, if you know anything that is to be added to complete the order. But we do not will that mixtures and

customs of rites in orders be observed hereafter, nor that this case be taken as an example by others if you decide that a merciful dispensation should be granted to this man.

Chapter X

Latin source headnote: If a monk of one order receives the priesthood in a second order to which he passed, upon returning to the first order he will minister freely in it.

Innocent III, to the Abbot and Convent of Carilocum.

On your part it was disclosed to our apostolate that a certain monk of yours, transferring himself to the Black Monks and assuming their black habit there, was promoted to the order of priesthood in that habit. Hence, because on this point you doubted whether he ought to minister in the order thus assumed, we, resolving the scruple of doubt of this kind, command you by apostolic writings that, unless another canonical impediment stands in his way, you permit that monk freely to execute the office of priest. [Given at Rome, at Saint Peter's, 1198.]

Chapter XI

Latin source headnote: If a Greek subject to a Latin bishop is ordained by a Greek without the Latin's permission, execution of the order is forbidden to him; but if it was with permission, he is then tolerated.

The same, to C., Cardinal-Priest and legate of the Apostolic See.

As to the translation of a pontiff—(*And below:* [cf. c. 4, On the Office of a Legate, I.30.]) But concerning the matter on which you wished to consult us, namely that many Greek clerics dwelling in the dioceses of Latins receive from Greek bishops—not in the Four Times—sometimes all the orders together and sometimes a part of them, and are afterwards prohibited by Latin bishops from celebrating, we respond thus to your consultation: when a Greek cleric subject to a Latin bishop is ordained by a Greek pontiff, unless it is done by the mandate or permission of his bishop, execution of the order thus received is to be forbidden to him, as one ordained by another's pontiff without the mandate or permission of his own bishop.

But if, by the mandate or permission of his own prelate, he was ordained by a Greek pontiff according to the custom of the Greeks, although the Latin bishop who causes his clerics to be ordained by a Greek prelate is to be blamed, nevertheless, for as long as such a custom is tolerated by the Church, the cleric ought not to be impeded from executing the orders thus received. Nevertheless, on this point we have resolved at an opportune time to ordain, with the counsel of our brothers, what shall seem honorable.

Chapter XII

Latin source headnote: One ordained by the Pope is not promoted to higher orders without the Pope's permission.

The same, to the Bishop of Modena.

Since in distributing [orders the canonical constitutions distinguish certain times, which approved custom has taught are to be observed especially concerning sacred orders, we are compelled both to wonder and to be disturbed because, as we have learned from many and as is circulated in common

report, the infamous Bishop of Bologna presumed to ordain Albert, bishop-elect of Imola, as deacon and priest at the same time. But because we are unwilling to leave uncorrected things that are attempted contrary to the canonical constitutions—especially where canonical laws are taught with greater renown—lest they pass as an example to presumptuous persons, since these things not only do not lack the mark of presumption and foolishness but also that of ambition and depravity, we command your discretion by apostolic writings, under precept, that you inquire most diligently into the truth concerning these matters, nevertheless hearing the excuses of the one ordaining and of the one ordained, if perhaps they decide to allege any, so that, instructed by your report, we may proceed more fully and securely in the business itself.] For we remember that this was humbly sought from us and mercifully granted: that, because the aforesaid A. was a subdeacon of the Roman Church, we would command him to be promoted by the Bishop of Bologna. [Given at the Lateran, 1200.]

Chapter XIII

Latin source headnote: Two sacred orders cannot be conferred upon the same person on one day, or on two days with the fast continued.

The same, to the same and to Master H., our subdeacon.

We have received your letters in reply concerning the disorderly ordination of [A.], bishop-elect of Imola, whom [G.], Bishop of Bologna, ordained as deacon on the preceding Saturday and as priest on the following Sunday with the fast continued. How greatly each of them transgressed in this matter is clearly understood by one who considers it prudently. For if it was not permitted to confer both orders upon him on the same day, by equal reason it was not permitted that one order be conferred on one day and the other on the next with the fast continued. For, because of the continuation of the fast, by canonical fiction, whether the morning of Sunday is drawn back to Saturday or the evening of Saturday is referred to Sunday, certainly morning with evening, or evening with morning, will be said to pertain to the same day. For if, insofar as this point of necessity is concerned, morning is referred to one day and evening to another, why would continuation of the fast be necessary, since they are understood to be fasting both on Saturday before supper and on Sunday before the midday meal?

But lest, if we passed over a deed of this kind in silence, others, deeming it lawful, should attempt to do similar things, and thus the perversity of the deed be drawn into an example by posterity, we therefore will that the aforesaid Bishop of Bologna, so that he may be punished in that in which he transgressed, remain suspended from the conferral of orders—namely, of the diaconate and priesthood—and the other from execution of the priestly office, until we dispose otherwise concerning them. Therefore, so that the apostolic mandate may obtain its due effect, we command you by apostolic writings that you cause the things set forth above to be published both by the bishops themselves and throughout the dioceses of Bologna and Imola.

Chapter XIV

Latin source headnote: One who ordains a boy of thirteen years as deacon is suspended from conferring orders, and the one ordained from executing that order until the lawful age.

Honorius III, to the Bishop and Archdeacon of León.

Either the Bishop of Coventry is not master of himself, or he seems to have rejected knowledge too greatly from himself, or he is proved to have sinned from malice. For, to keep silent about the other

enormities said of him, he is said, contrary to the institutions of the sacred canons, to have disorderly ordained as deacon M., the boy bearing the present letters, who is still thirteen years of age, in mockery of the clerical order. Indeed, if this were fully established for us, however much we are more inclined toward pardon than even toward due vengeance, we would so chastise this in him that the notorious fault would be rendered manifest by the punishment, and his revealed disgrace would make others more cautious in similar matters.

Unwilling, however, to leave this unexamined, we command your discretion that, after the truth concerning these matters has been investigated and learned, if you find the matter to be so, you suspend the aforesaid bishop from the conferral of orders, with the obstacle of appeal removed, and compel him by ecclesiastical censure, appeal being set aside, to provide a suitable ecclesiastical benefice for the same M., whom, to the disgrace of the one ordaining, we suspend from execution of the office of deacon until the lawful age.

Chapter XV

Latin source headnote: A bishop who confers several sacred orders upon the same person on one day, even if he did this by mandate of the metropolitan, is suspended from the power of ordaining.

The same, to the Abbots of Leton and Cala.

Our beloved son G., a canon of Humilis, some time ago disclosed to our apostolate that, when the church of Humilis had been widowed of its pastor, its canons, treating of the election of a pastor to be substituted, elected him unanimously. Since he was constituted below the sacred orders, our venerable brother the Archbishop of Cashel, their metropolitan, commanded the Bishop of Trecensis to promote him to three sacred orders on one and the same day, which that bishop fulfilled not by his own daring but by the mandate of the archbishop himself.

[At length, when requested, the same archbishop refused to bestow upon him the gift of consecration, putting forward the occasion of an ordination of this kind. Hence, it was humbly supplicated of us that, from the kindness of the Apostolic See, we deign to dispense concerning this with the aforesaid W., especially since it was said that he had hastened to receive the orders in this way not from the haste of his own will, but under so great a necessity and from the useful providence of almost all those present there he had permitted himself to be ordained in this manner, because manifold danger threatened the church of Emly if, while the same W. remained below the office of priesthood, his ordination were delayed.

Although the ecclesiastical norm had been transgressed enormously in the deed itself, nevertheless, from mercy, which exalts itself above judgment, we remember that we gave a mandate to our venerable brother the Archbishop of Armagh, the Bishop of Meath, and our beloved son the Archdeacon of Armagh that, after the truth concerning the foregoing had been more diligently investigated, if they found the matter to stand in such a way and the same W. otherwise suitable and useful to the church of Emly, by way of dispensation they should grant him permission to be consecrated. They were also to make known to us by their letters whatever they found had been attempted in this matter by the same archbishop, so that, rendered more certain by their report, we might take care to provide concerning it as would be expedient.

They, having summoned those whom they knew should be summoned and having investigated the truth more fully, transmitted into our presence the depositions of the witnesses produced on both sides. Having inspected them, we clearly understood that, after the election concerning the aforesaid W. had been celebrated, when on the following day the same W. had been promoted to the order of subdiaconate by the aforementioned Bishop of Roffensis, the same bishop separately summoned the archdeacon and canons of Emly. Saying that, because of the disturbance of the land and the many ill-disposed men who were preparing snares for the same W., he was unwilling to leave him below the order of priesthood, he confirmed by oath that the aforesaid archbishop had commanded this both from fear of the death of W. himself and because of the threatening danger of the church of Emly, and that the official of the same archbishop on his part prohibited the aforementioned bishop from then promoting the already-mentioned W., already ordained as subdeacon, to further orders.

When the same bishop answered him that in this matter he believed the archbishop, who had commanded him this with his own mouth, more than he believed that official, with his hand extended over the altar he swore upon the holy things that the often-mentioned archbishop had commanded it, and thus promoted the often-mentioned W. as deacon and priest.

Moreover, we found it sufficiently proved that the said archbishop enjoined upon John, Dean of Hely, that he prohibit the aforesaid bishop from promoting the said W., on the day on which he was promoted to three orders, to any order except the subdiaconate, nevertheless also prohibiting the same W. from permitting himself to be promoted further. But when the same dean had come to the church of Emly, on the part of God and of the Archbishop of Cashel he prohibited both the often-mentioned bishop—who had already ordained the subdeacons, after those who were to be promoted as deacons had been summoned and silence enjoined upon all—from promoting the already-mentioned W. to further orders, and the aforesaid W. from permitting himself to be promoted further.

It was also established for us from the letters of the aforesaid judges that the often-mentioned bishop, when questioned judicially, answered that the archbishop had not commanded him to promote W. to three orders on the same day, but from the archbishop's words he believed him to will this. The said bishop also made this same matter known to us through his letters. Furthermore, we understood from the letters of those judges that the same bishop spontaneously swore judicially that all the things contained in the attestations of the same W. were true.

We also learned from the letters both of the aforesaid archbishop and of the chapter of the church of Emly that, when a question had arisen between the said W. and the canons before the aforesaid archbishop, at a council celebrated at Kolmoellocum, both concerning the election and ordination of the often-mentioned W. and concerning certain of his excesses, and at length an appeal had been made by both parties to our hearing, the same W., not awaiting the term that he had decided to fix for his appeal, obtained the aforesaid letters from us with the truth suppressed.]

Therefore, since [from the foregoing] it has been established for us that the abovementioned bishop transgressed in several matters—both because, without the archbishop's mandate, as he himself confessed, he proceeded disorderly to an ordination of this kind; and because, even if the archbishop's mandate were established, since a dispensation of this kind is by no means permitted to the archbishop by the canon, and there is no doubt that it pertains to the Roman Pontiff alone, the bishop ought not to have obeyed him in this matter; and also because he varied the guilt of perjury several times, first swearing that the archbishop had commanded it and afterwards confessing

judicially that he had not mandated it—we, with the counsel of our brothers, suspend him from the power of ordaining until he shall merit to obtain our grace. [The often-mentioned man also, etc. Given at the Lateran, on the Nones of January, in the thirteenth year of our pontificate, 1211.]

Textual note: The source shifts the elect's initial from G. to W., calls the ordaining bishop first *Trecensis* and later *Roffensis*, and prints the grammatically difficult phrase *tam te magna necessitate*. The translation preserves the changes of initial and episcopal designation; it renders the last phrase contextually as "under so great a necessity." The forms occur in both the Latin Library transcription and the Friedberg-derived reference text.

Chapter XVI

Latin source headnote: One ordained to sacred orders outside the established times receives the order, and after penance the bishop dispenses with him.

Gregory IX, to the Archbishop of Bar.

We respond thus to your consultation: there is no doubt that those who received sacred orders outside the established times received the character. For a transgression of this kind, after first imposing a suitable penance upon them, you will be able to allow them to minister in the orders received, [being more diligently provident, etc. Given at Rieti, on the second day before the Ides of November, in the fifth year of our pontificate, 1231.]

Chapter XVII

Latin source headnote: A secret criminal, except a homicide, after penance ministers in the orders received and ascends to higher orders; before penance he is admonished not to minister even in those received.

The same.

It has been asked concerning priests or other clerics who through the guilt of adultery, perjury, homicide, or false testimony have lost the good of an upright conscience. (*And below:*) We respond that, if the crimes set forth have not been proved in judicial order or are not otherwise notorious, these persons, except those guilty of homicide, ought not after penance to be impeded in orders already received or to be received. If they have not repented, they are to be admonished and adjured under threat of divine judgment not to minister even in the orders received as a testimony of their own damnation.

Title XII: On the Scrutiny to Be Made in Ordination

Sole Chapter

Latin source headnote: A bishop questioned in the scrutiny of a bishop to be ordained can answer that he is worthy if he does not know him to be unworthy.

Innocent III.

It was set forth on your part—(*And below:*) You asked, furthermore, to be taught by the Apostolic See how, with conscience safe, you can respond in questions of this kind when bishops are summoned by an archbishop, or even by another, to the consecrations of bishops, and they present the bishop-elect

to the metropolitan himself to be consecrated, saying: "Reverend father, holy mother Church seeks that this elect be consecrated as bishop"; and, when the archbishop asks whether they know him to be worthy, they answer that they know and likewise believe him to be worthy; and you judge that in a response of this kind, lest you offend man, you have offended God, by responding sometimes beyond and sometimes against your conscience, since the conduct of the elect is either less well known or entirely unknown to you.

To this we respond thus to your fraternity: when we promote someone as deacon or priest, the first of the deacons who assists us says: "Holy mother catholic Church seeks that this deacon or subdeacon be assumed to the burden of the priesthood or diaconate"; and, when we ask whether he knows him to be worthy, he answers that, insofar as human frailty permits one to know, he both knows and testifies that he is worthy of the burden of an office of this kind. Hence, in such a response we do not believe that anyone sins, provided that he does not speak against his conscience, because he does not assert simply that the man is worthy, but insofar as human frailty permits one to know, since he ought to deem worthy the one whom he does not know to be unworthy.

Therefore, you will be able to use a response of this kind safely, unless perhaps the unworthiness of the one to be consecrated has been established for you. But if you know him to be unworthy, before the matter comes to a scrutiny of this kind, you should take care secretly to announce or make it known to the metropolitan—although, as we have said, we make a question of this kind not in the consecration of a pontiff but in the ordination of a deacon or priest. [You sought, etc. Given at Rome, at Saint Peter's, on the Ides of March, in the ninth year, 1206.]

Title XIII: On Those Ordained by a Bishop Who Renounced the Bishopric

Chapter I

Latin source headnote: A bishop who has renounced only the place can, when invited, confer orders as before. But if he has renounced the dignity also, the ordinand's own bishop dispenses with one ordained by him to minor orders, or unknowingly to sacred orders; he does not, however, dispense with one knowingly ordained by him to sacred orders.

Alexander III, to the Archbishop of Toledo.

Your fraternity asked us whether clerics who received orders after the renunciation made by your predecessor ought to remain in them or by the law of the canons to be promoted to greater orders. We, therefore, because the truth is not fully established for us, cannot respond to you briefly concerning this. We respond, therefore, by distinguishing whether he renounced only the place or both the place and the dignity together. For in the first case, unless prohibited by the Supreme Pontiff or his legate, when requested by some bishop he will reasonably be able to confer orders as before.

In the second case, however, we think a distinction must be made whether he conferred sacred or minor orders. For if someone received from such a man orders as far as the subdiaconate, because orders of this kind are also sometimes conferred by non-bishops, he will both be able to serve in them and, if suitable, to be promoted to greater orders. Indeed, if someone, after the renunciation had been made, knowingly received sacred orders from the same man, because he rendered himself

unworthy, he will not have execution of the office. But where he did not do so knowingly, a discerning pontiff will be able to dispense, unless the ignorance was gross and supine.

Chapter II

Latin source headnote: It is brief.

Gregory IX.

With clerics who unknowingly received orders from an excommunicated bishop, a dispensation will be able to be granted by their own bishops.

Title XIV: On the Age, Quality, and Order of Those to Be Placed in Authority

Chapter I

Latin source headnote: No summary is given.

From the Council of Poitiers.

Let abbots, deans, and provosts who are not priests become priests or lose their prelacies; let those who hold archdeaconries become deacons, and those who hold archpresbyterates become priests or lose the honor. But if, because some just cause prohibits it, they cannot be priests or deacons, let them lose the prelacies.

Chapter II

Latin source headnote: A church granted by dispensation to a minor ought to be governed not by laymen but by clerics until he reaches the proper age.

Alexander III, to the Archbishop of Canterbury.

By reason of the dignity committed to you and in consideration of your legation, you ought to extend the edge of your solicitude to all the churches of your legation, and with pastoral care to correct and amend the things that have been done enormously or contrary to justice, so that you may be able to render a full account before the father of the household concerning the sheep committed to you, and an abundant reward may be accumulated for you in heaven for your labor and solicitude.

We have learned, however, that the Bishop of Coventry, not attending to what the statutes of the sacred canons decree, nor preserving pontifical moderation, granted several churches to boys who are constituted below their tenth year in the archdeaconry of our beloved son R., Archdeacon of Chester, which are administered and disposed not by clerics but by laymen. Hence, because this is hostile to ecclesiastical utility and contrary to reason, and therefore ought not to be tolerated in any way, we command your fraternity by apostolic writings, under precept, that, if the matter stands thus, you rebuke and chastise the aforesaid bishop with a living rebuke; and, all occasion and appeal ceasing and the laymen having been removed, commit the administrations and custody of the aforesaid churches to suitable clerics until the aforesaid boys reach a fitting age.

You shall prohibit the same bishop more strictly from hereafter granting churches to be governed except to persons who possess age and knowledge. But if he acts otherwise, imposing the due punishment upon him, you shall decree his institution and grant altogether to lack force.

Chapter III

Latin source headnote: Governance of a church ought not to be committed to one under fourteen years of age.

The same, to the Archbishop of Canterbury and his suffragans.

It is exceedingly indecorous and absurd that those who do not know how to govern themselves should govern churches, since such persons are to be admitted to the governance of churches as excel in discretion and shine in uprightness of morals. Therefore, unwilling to endure that at the prayers or insistence of any persons, as is frequently accustomed to be done in your regions, the governance of a church should be committed to little children, we command your fraternity by apostolic writings, [under precept], that you do not presume, for anyone's favor or with a view to it, to grant the personatus of any church to anyone constituted below his fourteenth year. You are to know for certain that, if you presume to contravene our precept in this matter, with the Lord as author we will entirely invalidate what you have done as a result, and will punish your disobedience gravely.

Chapter IV

Latin source headnote: One unworthy in knowledge, morals, or age ought not to be instituted to the governance of churches; and one who has two churches is compelled to relinquish one, unless a cause supports him.

The same.

It befits you to employ such care in ordaining the churches of your diocese that no cleric is ordained in them contrary to the decrees that we promulgated in the Lateran Council, or even contrary to the ancient enactments of the sacred canons; rather, take pains to place in them such persons as can suitably conduct the care of the flock committed to them and invite them to virtues by the example of a good work.

Hence it is that by the present letters we more strictly prohibit you from instituting in those churches persons who are to be ordained to the care of souls in the churches of your episcopate, or permitting them to be instituted on any occasion or even with a view to our letters, if they do not conform in knowledge, morals, and age to the institutions of the council. But you shall also be permitted, appeal being set aside, to compel those having several churches that do not depend upon one another to relinquish whichever one of them they prefer, unless those churches are so slender in substance that they cannot suitably support their own priests. But those, etc. [cf. c. 22, On the Right of Patronage, III.38.]

Chapter V

Latin source headnote: One who is not yet in sacred orders, if otherwise suitable, can by dispensation be assumed to the governance of a parish church.

The same.

Furthermore, although no one ought to be admitted to the governance of a parish church unless he is at least a subdeacon, nevertheless those constituted in minor orders are customarily assumed by dispensation, provided that they are such as can be ordained priests within a short time.

Chapter VI

Latin source headnote: Because of the necessity and utility of the church, its clerics are compelled to receive orders not annexed to their benefices.

The same.

You ask us what is to be done concerning clerics committed to your jurisdiction who, although they abound in many ecclesiastical benefices, after being admonished by you are unwilling to be promoted to greater orders, saying that they have secretly committed something of such a kind that it does not permit them to be ordained with conscience safe. Therefore, since the sacred canons appear to disagree concerning this case—some saying that they are by no means to be compelled, while others assert the contrary—we resolve every bond of contrariety by the present page, establishing that, if the aforesaid clerics confess themselves to be unworthy to receive greater orders because of their secret sins, their inferiors in the same church whose life is approved shall, according to canonical institution, be preferred to them. And, unless perhaps those who refuse to be ordained for the already-mentioned cause are very useful in other services of the church, let their benefices be taken away and canonically conferred upon others.

But if from their will alone they refuse to be ordained, and the utility of the church counsels it or necessity altogether requires it, provided that they are suitable, you shall, with appeal ceasing, compel them to receive greater orders through loss of the places or orders that they possess and withdrawal of their benefices.

Chapter VII

Latin source headnote: The event of the death of a sick person does not impede the promotion of his physician who is skilled, solicitous, and observes the traditions of the art.

Clement III, to R., Canon of Cologne.

Through your report it has reached our ears that, since you are learned in the medical art, you have with diligence furnished medicine to several persons according to the tradition of that art, although the result rather often occurred to the contrary, and those to whom you thought you were applying a remedy incurred the danger of death after receiving the medicines. But because, as you assert, you desire to be promoted to sacred orders and wished to consult us concerning this, we respond briefly to you that, if your conscience stings you concerning the foregoing, by our counsel you should not ascend to greater orders.

Chapter VIII

Latin source headnote: One who has remained under suspension for a year is deprived of the benefice that he previously had and of that which he acquired in the meantime.

Celestine III.

When Pope Clement of good memory, our predecessor, had summoned I. Buccarum, Melearum, Maius Raofaca, and certain other clerics of Bar to come into his presence to answer H., their archdeacon, whom they had gravely injured, because they scorned to come according to the apostolic mandate, he caused a sentence of suspension to be promulgated against them through the Bishop of

Vigilia. Remaining under it, as is said, for three years, certain of those suspended obtained another ecclesiastical benefice.

And because you wished to consult us whether benefices received in this manner can reasonably be retained, we respond to you by the notice of the present letters that they are not permitted to retain in any way either the benefices that they had or those that they afterwards obtained. Hence, we gave a mandate to our venerable brother the Archbishop of Bar that for such great obstinacy and apostolic contempt he should not delay in despoiling them of the benefices that they possess, to be detained in his hands until he receives our letters and mandate concerning what he ought to do about these matters.

Chapter IX

Latin source headnote: A subdeacon can be elected bishop.

Innocent III.

Many persons very often doubt whether a subdeacon can be elected bishop. Indeed, Pope Urban I decreed that no one should be elected bishop unless he was found to be in sacred orders and living religiously. "By sacred orders," he says, "we mean the diaconate and priesthood, for the primitive Church is read to have possessed only these. Subdeacons, however, because they too minister at altars, we permit, when expediency requires, to be elected bishops, provided that they are of excellent knowledge and religion; and we do not permit this to be done without the permission of the Roman Pontiff or metropolitan." In these words it is intimated that Urban, referring himself to the state of the primitive Church, in which the order of subdiaconate was by no means called sacred, instituted that an election concerning a subdeacon could not be celebrated except for the sake of utility, and even then only with the permission of the metropolitan or Roman Pontiff.

§ 1. But since today the subdiaconate is counted among the sacred orders, as Pope Urban II expressed in these words: "Let the impious blush and understand that, by the judgment of the Holy Spirit, those who are placed in sacred orders—the priesthood, diaconate, and subdiaconate—if they have not lived chastely, are to be excluded from every dignity of those grades"; and again: "Let no one be permitted to approach sacred order unless he is either a virgin or of proved chastity, and he who, up to the subdiaconate, has had one wife and a virgin"; and since, after the likeness of a deacon and priest, a subdeacon ought to observe continence, as was established in the Sixth Synod, that if anyone of those who enter the clergy should wish to be joined to a woman by nuptial law, he shall do this before the order of subdiaconate; and blessed Gregory is read to have established that bishops should presume to make no one a subdeacon unless he has promised that he will live chastely—

§ 2. We, wishing to cut away the matter of dispute concerning this point, establish that a subdeacon can be freely elected bishop just as a deacon or priest can.

Chapter X

Latin source headnote: An irregular person in minor orders can by dispensation be instituted as abbot.

The same, to the Cardinal-Priest of the title of the Holy Cross.

We commend in the Lord your diligence, which you are known to employ in reforming the monastery of Saint Quiricus. By the authority of the present letters we command your devotion that, if you cannot provide better for the same monastery with a suitable person, you institute as abbot that monk whom you commended in your letters for uprightness and industry, through whom it is believed that the condition of the same place is to be reformed. You shall have absolutely no regard for the unlawful petition that certain laymen were making, but shall act solely from the office of your own provision, in such a way, namely, that he does not ascend to sacred orders, since, when the point of necessity presses, one constituted even in minor orders can be assumed as abbot. And let the aforesaid laymen not be joined to the aforementioned monk by consanguinity or affinity, such that from their petition any adverse suspicion ought to arise against him.

Chapter XI

Latin source headnote: An abbot, if he is a priest and has been blessed, can confer the clerical order.

The same, to the Archbishop of Rouen.

Since it sometimes happens that laymen flying to monasteries are tonsured by their abbots, you sought an oracle from the Apostolic See as to whether clerical order is conferred in the tonsure. Concerning this we respond to you that, since it was established in the Seventh Synod that each abbot is permitted, by imposition of hands, to make readers solely in his own monastery, provided that it is known that imposition of hands was made upon those abbots by a bishop according to the custom for abbots to be placed in authority, and it is established that he is a priest, clerical order is conferred through the first tonsure, according to the form given by the Church, by abbots of this kind. [Furthermore, etc. (cf. c. 24, On Rescripts, I.3.) Given at the Lateran, on the Kalends of September, in the thirteenth year, 1210.]

Chapter XII

Latin source headnote: If a canon regular, having become a monk, has returned for a just cause to a canonry where he is afterwards placed in authority, he will lawfully be able to hold the prelacy.

The same.

We have understood that, before you were assumed to the governance of the abbey, although you had conducted yourself laudably in your monastery, you went to the monastery of Saint Innocent of such an order. When you had remained for some time in that order, at length, returning to your heart, with the counsel of the metropolitan and other [religious men], you took care to return to the first house. There at length, under the discipline of regular observance, you so pleased God and men that, at the requirement of your merits, your brothers unanimously placed you over themselves as abbot.

Therefore, lest on the occasion of the stay that you contracted in the aforesaid monastery your conscience, as it were, sting you, [and] you grow lukewarm in the care of the administration undertaken, we attend to what is provided in the canon: that no canon regular should become a monk unless perhaps—which God forbid—he has publicly fallen; and, if he has become one, he shall return to the order of canons, remaining last in choir and bearing the cowl as a memorial. We command your discretion that you take pains to exercise indefatigable solicitude concerning the care committed to you, and so continue the subsequent good things with the prior ones that you may be

able to expect from God a worthy reward. [Given at the Lateran, on the seventh day before the Kalends of March, in the thirteenth year of our pontificate, 1210.]

Chapter XIII

Latin source headnote: One ordained to sacred orders without a title justly seeks a benefice from the one who ordained him.

The same.

We have learned through your report to our ears that certain clerics who were promoted to sacred orders without a title harass you concerning the obtaining of benefices in the church of Braga, although you could not then suitably furnish them from all the revenues of your church, especially since we command provision in necessary things to be made for those who by neither merits nor knowledge deserve ecclesiastical benefices even in parish churches, much less in the church of Braga, and whose life and knowledge are altogether unknown to us. If we had certainty concerning them, we would not command provision to be made for them in either greater or lesser churches. And although, according to the apostolic mandate, you are willing to provide for suitable persons in your chapels and in other parish churches outside the city, since you cannot provide for everyone in the greater church, nevertheless they disdain to receive provision in those churches. The judges also, and the admonitors or executors, to whom they carry our letters, do not admit your lawful exceptions that you set forth in their presence; hence you sought from us that we provide for you more kindly in this matter.

§ 1. Therefore, although in the ordinations of clerics you and your predecessors ought to have employed such diligence that less suitable persons were not ordained by you, and for this reason after their promotion you will not be able to put forward an exception of this kind against them, unless perhaps after they were promoted they rendered themselves unworthy, nevertheless, from superabundance, when it is fitting that we write for such persons, we cause this to be placed in our letters: that if the ordained person for whom we write is held to be suitable and not unworthy of an ecclesiastical benefice, a competent benefice shall be granted to him by the one who ordained him or that man's successor. For, even if we wished to proceed against you at law, we could deservedly compel you to provide for those whom it was established had been ordained by you or your predecessors, especially because you ought to regard as suitable to obtain an ecclesiastical benefice those whom you received into orders. Hence you ought not to bear it gravely, but rather are bound devoutly to incline to us, if we cause those to be examined by others whom we do not believe were ordained without examination, before we wish to compel you to provide for them.

§ 2. We therefore command your fraternity by apostolic writings under precept that you not delay in providing, in the greater church or other parish churches of the diocese of Braga, for those concerning whom it should happen that you receive our mandates in the common form, since we do not will that you be compelled for less suitable persons. But if you put forward any exceptions against such impetrators of our letters in the presence of the delegates, we command that they be heard.

Chapter XIV

Latin source headnote: One less suitable ought not to be promoted as priest or assumed to the governance of souls.

The same, in the General Council.

Since the governance of souls is the art of arts, we strictly command that bishops diligently instruct and inform those to be promoted as priests, either personally or through other suitable men, concerning the divine offices and ecclesiastical sacraments, and how they may celebrate them rightly. For if hereafter they presume to ordain the untrained and ignorant—which indeed can easily be detected—we decree that both those ordaining and those ordained are subject to grave vengeance. For it is holier, especially in the ordination of priests, to have few good ministers than many evil ones, because, if the blind leads the blind, both slip down into the pit.

Chapter XV

Latin source headnote: A defect of knowledge casts down one already promoted.

Honorius III, to the Chapter of Bremen.

Although many matters were set forth against our venerable brother the Bishop of Calinum, even if none of them had been proved, nevertheless, because he confessed before us that he had never learned grammar nor even read Donatus, and through the evidence of the fact his illiteracy and insufficiency are established to such a degree that it would be contrary to God and the canonical enactments to tolerate so great a defect in a bishop, by the common counsel of our brothers we have decided that he must be removed altogether from execution of the pontifical office and from administration of the church of Calinum, invalidating whatever he shall hereafter attempt in the name of that church or concerning its goods.

Title XV: On Sacred Anointing

Chapter I

Latin source headnote: The Church of the Greeks ought in ordinations and consecrations to observe the anointings that the Roman Church observes; moreover, when a bishop is consecrated, he is anointed with chrism on the head and hands; if this has been omitted, it is to be supplied by three bishops. § 5. It treats of the anointing of kings and of the differences in anointing between kings and pontiffs. Pan. § 6. It treats of the anointing of all Christians. § 7. It treats of the anointing with chrism after baptism, which is called confirmation. § 8. It treats of the consecration of an altar. Abbas.

Innocent III.

When our venerable brother the Bishop of Barcar came to the Apostolic See, who had not received sacred anointing in his consecration because among you pontiffs are not accustomed to be anointed when they are consecrated, we commanded that what had been lacking in him be supplied in him, causing his head and hands to be smeared with sacred chrism according to ecclesiastical custom by our venerable brother John, Bishop of Albano, with two bishops assisting him.

For the catholic Church holds this not only from divine precept but also from the example of the Apostles. Indeed, in Exodus it is read that the Lord commanded Moses to anoint Aaron and his sons so that they might discharge the priesthood. And Pope Anacletus, Greek by nation, who was ordained priest by blessed Peter and afterwards succeeded Clement in the office of the apostolate, hands down in his ordinance that bishops are to be anointed after the custom of the Apostles and Moses, because

all sanctification consists in the Holy Spirit, whose invisible power is mingled with sacred chrism. Hence:

§ 1. We will you to know that there are two kinds of anointing: the exterior, which is material and visible, and the interior, which is spiritual and invisible. By the exterior the body is visibly anointed; by the interior the heart is invisibly anointed. Concerning the first, the Apostle James says: "Is anyone among you infirm? Let him bring in the priests of the Church, and let them pray over him, anointing him with oil in the name of the Lord, and the prayer of faith will save the infirm man." Concerning the second, the Apostle John says: "Let the anointing that you received from him remain in you, and you have no need that anyone teach you, but as his anointing teaches you concerning all things." The visible and exterior anointing is a sign of the interior and invisible anointing. But the invisible and interior anointing is not only a sign but also a sacrament, because, if worthily received, it without doubt either effects or increases what it signifies.

§ 2. To furnish the exterior and visible anointing, however, the oil that is called the oil of catechumens or of the infirm is blessed, and chrism, which by mystical reason is made from oil and balsam, is prepared. For by oil the brightness of conscience is signified, according to what is read: "The prudent virgins received oil in their vessels with their lamps"; but by balsam the fragrance of reputation is expressed, on account of which it is said: "Like fragrant balsam, I gave forth an odor."

§ 3. Therefore, a bishop ought to be anointed with this chrism not so much in body as in heart, so that inwardly he may have brightness of conscience toward God and outwardly have the fragrance of reputation toward his neighbor. Concerning the brightness of conscience the Apostle says: "Our glory is this, the testimony of our conscience," for "all the glory of the king's daughter is within." Concerning the fragrance of reputation the same Apostle says: "We are the good fragrance of Christ in every place, and to some we are the fragrance of life unto life, to others the fragrance of death unto death." For a bishop ought to have good testimony both from those who are within and from those who are without, so that curtain may draw curtain, and the one who hears may say: come.

§ 4. With this ointment the head and hands of a bishop are consecrated. For by the head the mind is understood, according to this: "Anoint your head and wash your face." By the hands works are understood, according to this: "My hands dripped myrrh." Therefore, the hand is anointed with the oil of piety so that the bishop may work good toward all, but especially toward the household of faith. The head, however, is anointed with the balsam of charity so that the bishop may love God with his whole heart, whole mind, and whole soul, and his neighbor as himself. The head is anointed because of authority and dignity, and the hands because of ministry and office.

The head is anointed so that it may be shown that he represents the person of him concerning whom it is said through the Prophet: "Like the ointment upon his head that descended upon the beard, the beard of Aaron." For the head of man is Christ; the head of Christ is God, who says concerning himself: "The Spirit of the Lord is upon me; because he anointed me, he sent me to evangelize the poor." The hands of a bishop are anointed so that it may be shown that he receives the power of blessing and consecrating. Hence, when the consecrator anoints them, he says: "Deign, Lord, to consecrate and sanctify these hands through this sacred anointing and through our blessing, so that whatever they consecrate may be consecrated, and whatever they bless may be blessed in the name of the Lord."

§ 5. Hence, in the Old Testament not only a priest but also a king and a prophet was anointed, as in the Book of Kings the Lord commanded Elijah: "Go and return to your house through the desert to Damascus, and when you have arrived there, you shall anoint Hazael king over Syria, and you shall anoint Jehu son of Nimshi king over Israel. Moreover, you shall anoint Elisha son of Shaphat, who is from Abel-meholah, as prophet in your place."

But when Jesus of Nazareth—whom God anointed with the Holy Spirit, as is read in the Acts of the Apostles—was anointed with the oil of gladness above his fellows, he who according to the Apostle is the head of the Church, which is his body, the anointing of a prince was transferred from the head [namely] to the arm, so that thereafter a prince is anointed not on the head but on the arm, or on the shoulder, or on the upper arm, in which princely power is fittingly signified, according to what is read: "Princely power was placed upon his shoulder, etc." To signify this also, Samuel caused the upper arm to be placed before Saul, to whom he had given a place at the head before those who had been invited. But the sacramental anointing was preserved on the head of a pontiff because in the pontifical office he represents the person of the head. There is a difference, moreover, between the anointing of a pontiff and that of a prince, because the head of a pontiff is consecrated with chrism, while the arm of a prince is smeared with oil, so that it may be shown how great the difference is between the authority of a pontiff and the power of a prince.

§ 6. But because Christ made us in his blood a kingdom and priests for our God, on account of which the Apostle Peter says, "You are a chosen race, a royal priesthood," therefore in the New Testament not only kings and priests are anointed, but also all Christians: twice before baptism, namely with blessed oil, first on the breast and then between the shoulder blades; and twice after baptism, namely with sacred chrism, first on the crown of the head and finally on the forehead.

For the one to be baptized is anointed on the breast so that through the gift of the Holy Spirit he may cast away error and ignorance and receive the right faith, because the just man lives by faith. The one to be baptized is anointed between the shoulder blades so that through the grace of the Holy Spirit he may cast off negligence and torpor and exercise good works, because faith without works is dead, so that through the sacrament of faith there may be purity of thoughts in the breast and through the exercise of work there may be strength for labors on the shoulders, in order that faith may work through love according to the Apostle.

But the baptized person is anointed on the crown of the head so that he may be prepared to render an account of the faith to everyone who asks, because by the head the mind is understood, according to what is read: "The eyes of the wise man are in his head," of which the higher part is reason and the lower is sensuality. Hence, by the crown, which is the higher part of the head, reason, which is the higher part of the mind, is well understood. The baptized person is anointed on the forehead so that he may freely confess what he believes, because "with the heart one believes unto justice, but with the mouth confession is made unto salvation," mindful of what the Lord says: "Whoever confesses me before men, I also will confess him before my Father."

Therefore, before baptism he is anointed with blessed oil, and after baptism with sacred chrism, because chrism belongs to a Christian alone. For Christ is said from chrism, or rather chrism is said from Christ—not according to the form of the name but according to the account of faith. Christians, however, are said from Christ, as though the anointed were derived from the Anointed One, so that all may run together into the fragrance of that ointment whose name is oil poured forth.

§ 7. By chrismation of the forehead the imposition of hands is signified, which by another name is called confirmation, because through it the Holy Spirit is given for increase and strength. Hence, although a simple priest or presbyter may furnish the other anointings, only the high priest—that is, a bishop—ought to confer this one, because it is read concerning the Apostles alone, whose vicars bishops are, that through the imposition of hands they gave the Holy Spirit, as the reading from the Acts of the Apostles makes manifest: "When," it says, "the Apostles who were at Jerusalem had heard that Samaria had received the word of God, they sent Peter and John to them; and when they had come, they prayed for them that they might receive the Holy Spirit. For he had not yet come upon any of them, but they had only been baptized in the name of the Lord Jesus; then they laid hands upon them, and they received the Holy Spirit."

His coming is signified through the ministry of anointing, because the dove in which the Holy Spirit descended upon Christ in baptism, returning in the evening during the flood, brought back a branch of flourishing olive, whose sacrament David the Prophet, foreknowing it, proclaimed that the face would be gladdened with oil.

§ 8. Furthermore, according to ecclesiastical custom, an anointing is performed when an altar is consecrated, when a temple is dedicated, and when a chalice is blessed, not only from the mandate of divine law but also from the example of blessed Sylvester, who, when he consecrated an altar, anointed it throughout with chrism. For the Lord commanded Moses to make the oil of anointing, from which he should anoint the tabernacle of testimony and the ark of the covenant, and the table with its vessels. Concerning these anointings also, if perhaps you should doubt, when we have been consulted by you, we will instruct your fraternity more fully. Nevertheless, the sacrament of anointing effects and figures another thing both in the New Testament and in the Old; hence the Church does not Judaize when she celebrates the sacrament of anointing, as the ancients falsely claim, who know neither the scriptures nor the power of God.

§ 9. We therefore admonish your fraternity and exhort it more attentively, commanding [you] by apostolic writings that, at the mandate of our beloved son the cardinal-priest of the title of the Holy Cross, legate of the Apostolic See, you too receive sacred anointing, lest anything be lacking to you for the fullness of the sacrament. Thus, when you have been smeared with sacred chrism, you shall likewise anoint your archbishops and bishops, and through them cause the hands of priests to be anointed with blessed oil, so that hereafter in ordaining priests and consecrating bishops you observe and cause to be observed the custom that the Apostolic See observes, which, by the Lord's disposition, is the mother and teacher of all the faithful.

Moreover, through the aforesaid cardinal we send you the pontifical ornaments: stockings and sandals, amice and alb, girdle and subcinctorium, stole and maniple, tunicle and dalmatic, gloves and ring, chasuble and mitre. But we had previously sent the pallium through our beloved son John, our chaplain. And although the Roman Pontiff does not use a pastoral staff, both because of history and also because of a mystical reason, which the same cardinal, as he received it from us, will be able to teach, nevertheless you will be able to use it after the likeness of other pontiffs. [Given at Anagni, on the sixth day before the Kalends of March, in the seventh year of our pontificate, 1204.]

Textual note: In section 8 the Latin Library-derived working transcription contained a base64-like corruption in place of *requisiti, fraternitatem tuam plenius instruemus. Verum tamen*. The reading printed

here and translated above has been restored from the Friedberg-derived reference text. Three stray *ñ* characters separating portions of the source headnote were likewise removed.

Title XVI: On Sacraments Not to Be Repeated

Chapter I

Latin source headnote: In the case of one ordained subdeacon without imposition of hands, and one confirmed with an anointing not of chrism but of oil, there shall be no repetition, but what was omitted shall be supplied.

Innocent III.

The pastoral—(*And below:* [cf. c. 28, On the Office of a Delegated Judge, I.29.]) Furthermore, you wished to consult us whether one who was assumed to the order of subdiaconate without imposition of hands ought to be permitted to minister, and whether the sacrament of confirmation ought to be repeated in one who through error was smeared not with chrism but with oil. To this we have decided to respond briefly to your fraternity that in such matters nothing is to be repeated, but what had been incautiously omitted is cautiously to be supplied. [Given at Rome, at Saint Peter's, on the fourteenth day before the Kalends of January, 1204.]

Chapter II

Latin source headnote: It prohibits those buried by schismatics from being exhumed, the vestments in which they celebrated from being blessed again, and the altars upon which they celebrated from being consecrated again.

Honorius III, to the Archbishop of London and his suffragans.

You humbly asked us what ought to be done concerning the bodies of the dead who in the time of the schismatic and reprobate Waldemar were buried by schismatics, and concerning the priestly vestments in which, as well as the altars upon which, degraded priests celebrated. We respond briefly to your inquiry that we do not believe that those thus buried are to be exhumed solely on this account, or that such vestments ought to be blessed again, or the aforesaid altars reconsecrated.

Textual note: The source prints *Archiepisco Londonensi*, although the reference to Waldemar's schism indicates the Archbishop of Lund. The translation preserves the printed addressee rather than silently correcting it.

Chapter III

Latin source headnote: If imposition of hands was omitted in the ordination of a priest or deacon, it shall be supplied at the times established.

Gregory IX, to the Archbishop of London.

When a priest and deacon is ordained, he receives the imposition of hands by bodily touch according to the rite introduced by the Apostles. But if this was omitted, it is not in any way to be repeated; rather, at the time established for conferring orders of this kind, what was omitted through error is cautiously to be supplied. The suspension of hands, however, ought to be made when the prayer is

poured forth over the head of the one to be ordained. [Given at Anagni, on the fifth day before the Ides of December, in the sixth year of our pontificate, 1232.]

Textual note: As in the preceding chapter, the source prints *Londonensi* ("of London"); the Scandinavian context may instead indicate Lund, but the printed form is retained.

Title XVII: On Whether the Sons of Priests Are to Be Ordained

Chapter I

Latin source headnote: An illegitimate person is not ordained unless he becomes a religious; and even then he is not placed in authority, that is, he is not made eligible for a prelacy.

From the Council of Poitiers.

Let the sons of priests and others born from fornication not be promoted to sacred orders unless they either become monks or live regularly in a canonical congregation. But let them in no way have a prelacy. Nor shall slaves, unless they are endowed with freedom by their masters.

Chapter II

Latin source headnote: An illegitimate son of a priest who, with this fact suppressed, obtained his father's church through an apostolic rescript is removed from it.

Alexander III, to the Bishop-Elect of Lincoln.

Coming into our presence, R., a priest, having suppressed the fact that he was the son of a priest, fraudulently obtained [letters] from us that he should be chaplain in the church of Bilesby, in which his father ministered. Therefore, we command your discretion by apostolic writings, [under precept], that within forty days after reception of these letters you diligently inquire into the truth of the matter; and, if it is established for you that the aforesaid R. was begotten during his father's priesthood and that his father ministered in the same church, notwithstanding our aforesaid letters, you shall remove him from it, with every occasion and appeal ceasing.

Chapter III

Latin source headnote: The son of a priest cannot preside over his father's church. This is said with the following chapter.

The same.

By the authority of the present letters we also command you that you in no way permit the sons of priests to minister in their fathers' churches or to obtain them on any occasion, but, with every obstacle of appeal ceasing, take pains to remove them altogether from the churches in which their fathers are known to have ministered.

Chapter IV

Latin source headnote: It says the same.

The same, to the Bishop of Worcester.

Through the complaint of M., a cleric, it became known to our ears that, when R., a priest, had for a rather long time held the church of Blessed Mary of Vicum as persona, [and] after his death the same Milo had been presented by Richard Paciford, lord of the soil, R., the son of that priest, begotten during his priesthood, strove to impede the institution of that cleric and aspires by every means he can to have the same church.

Therefore, because it is unworthy and contrary to canonical enactment that sons should succeed fathers in churches, we, wishing solicitously and diligently to attend to the eradication of this enormity, command your fraternity by apostolic writings, under precept, that, if it is public and notorious that the father of the aforesaid cleric R. held the personatus in the aforesaid church, you in no way permit his son to minister there or to have the personatus of the same church. And if perhaps [for some cause] he has already been instituted there, you shall not delay in removing him from it by our authority, with the remedy of appeal removed. And, if the aforementioned M. has been presented to you for that church by the one to whom the presentation is known to belong, provided that he is otherwise suitable, you shall not postpone receiving him there, with contradiction and appeal ceasing, and shall cause him peacefully to possess the aforesaid church.

Chapter V

Latin source headnote: A bishop who knowingly conferred the father's church upon the son of a priest cannot afterwards remove him from it.

The same, to the Bishop of London.

Coming into our presence, N., a cleric and bearer of the present letters, set forth to us in a supplicatory representation that, when you had given him a title to the chapel of the church of Saint I. of Newburgh, which you granted and assigned to him, and had ordained him priest for it, you afterwards despoiled him of it because his father had ministered in the aforesaid church. Therefore, we command your fraternity by apostolic writings, under precept, that, if it was known to you when you gave it to him that his father, a priest, had ministered in the said church, you restore it to him, with delay and appeal ceasing, and leave him in peace, removing another if perhaps you instituted anyone in it. But if you did this in ignorance, since you ordained him priest for that church, you shall restore it to him and, until you provide for him in another church from which he can be honorably supported, shall inflict no burden or trouble upon him concerning the aforesaid church.

Chapter VI

Latin source headnote: It contains a grace and says this: Once the son of a priest has been ordained, he ought not to lack a benefice. Johannes Andreae.

The same, to the Bishop of Oxford.

R., the bearer of the present letters, set forth to us that, when he had been presented to the church of Saleb. by the lord of the soil, you were unwilling to commit the care of souls to him or furnish your assent to this matter because he was the son of a priest. Concerning this, indeed, we commend your discretion in the Lord, as is worthy, and hold your providence exceedingly pleasing and acceptable.

But because with inward affection of mind we have compassion upon his necessities and the labors that he sustained in coming to us, and it is unworthy that he, after he has, as he asserts, been

ordained subdeacon, should altogether lack provision of an ecclesiastical benefice, we admonish and command your discretion by apostolic writings that within forty days after reception of these letters, with contradiction and appeal ceasing, you take pains to find, with the assent of the same cleric, some honorable priest to serve the aforesaid church, in such a way that the aforesaid R., while serving the same in his own order, ought, out of regard for God and by our and your authority, peacefully to obtain for as long as he lives one half of all the benefices of the aforesaid church. For a priest alone cannot celebrate the solemnities of masses or other divine offices without the aid of a minister.

Chapter VII

Latin source headnote: A son can preside over a church over which his father presided mediately.

The same, to the Archbishop of Canterbury.

From the complaint of G., a cleric, transmitted to us, we have perceived that you delayed at present to receive him in a certain benefice of the church of N. upon the presentation of our beloved son the Abbot of Castris because a certain [E.], who was said to be his father, ministered in the aforesaid church, but after his death an intermediate person intervened upon whom the aforesaid benefice was conferred. Therefore, we command and order your fraternity by apostolic writings that, if it is so, you do not postpone admitting the aforementioned G. to the aforesaid benefice, with every occasion and appeal ceasing, the decree of the apostolic rescript being no less observed for this reason, which here detests hereditary succession in the Church of God so that it may approve canonical possession. [But if both of you cannot be present to execute these matters, let one of you nevertheless execute them.]

Chapter VIII

Latin source headnote: A son can preside over a church in which his father ministered without a title.

The same, to the Bishop of Worcester.

Appearing in our presence, G., a cleric and bearer of the present letters, showed us in a supplicatory representation that, when he had canonically obtained the chapel of Storton and had possessed it peacefully for several years, R., a knight, despoiled him of it without judgment and justice. And when the aforementioned cleric had lodged a complaint concerning this before you, brother and fellow bishop, it was objected against him that his father had ministered in the same chapel, and he has not yet been able to recover the aforesaid chapel.

But because it pertains to our office to restrain with due severity the insolence of laymen against ecclesiastical men, we command your fraternity by apostolic writings, under precept, that, after the truth of the matter has been diligently investigated and learned, if it is established for you that the same cleric was cast out of the aforesaid chapel through lay power, and that his father was not the persona or perpetual vicar of the aforesaid chapel, although he sometimes ministered in it in the name of the same G., you shall not omit to restore it to him with the revenues received from it, removing another if anyone holds it, with delay, occasion, and appeal ceasing; any letters of ours that may have been obtained not prejudicing truth and justice. And you shall cause him to possess it peacefully, as it was canonically obtained. [If both of you cannot be present to execute these matters, let one, having associated with himself discreet and honorable men, nevertheless execute them.]

Chapter IX

Latin source headnote: If one to whom it was granted by the Pope that he could dispense with the sons of priests concerning the immediate holding of their fathers' churches dispenses with someone, that person cannot be removed through letters of justice afterwards obtained against him.

The same, to the Archbishop of York.

It was set forth to us on your part that, when formerly in response to your consultation concerning the sons of priests you received such letters from us that you could sustain in the churches that their fathers had possessed without anyone intervening those whom you knew to be of approved life and sound conduct, or whom it was established had held those churches for a long time, certain persons obtained letters to judges that, if it were established that they were the sons of priests or clerics who had held the churches immediately before them, silence should be imposed upon them concerning these matters, with appeal ceasing, and those churches should be assigned to the petitioners, although they could not show themselves to have been instituted in them by bishops.

Concerning this we respond thus to you: if through our earlier letters you dispensed with any clerics, we do not will your dispensation to be invalidated with a view to our later letters, but command that it be preserved unimpaired. But by apostolic authority we prohibit other clerics from being instituted, with a view to a lay grant and without the authority of their own pontiff, in churches subject to parochial law, or, if instituted, from remaining in them.

Chapter X

Latin source headnote: If it is manifest that a son immediately succeeded his father in a church, he shall be removed from it without any reception of witnesses.

The same, to the Archbishop of Canterbury and his suffragans.

Because it is prohibited by the sacred canons that any persons presume to possess ecclesiastical benefices by hereditary right, and those who were begotten during priesthood ought not to be promoted to sacred orders unless they have lived an approved life in a cloister of monks or canons regular, we command you that, if it is manifest and public that fathers exercised personatus in churches, you altogether exclude the sons from those same churches, even if they have obtained them, with appeal ceasing; nor shall they be assumed thereafter to their governance. For we do not will that a cause be brought into judgment on that account, or that witnesses even be admitted, if this is manifest.

Chapter XI

Latin source headnote: Even a legitimate son is removed from a church in which he immediately succeeded his father as vicar or rector.

The same, to the Archbishop of Canterbury.

We ought to attend with the zeal of complete solicitude to extirpating successions from holy churches; it also befits you to exhibit vigilant care for this, lest we seem to be less diligent concerning the ministry of the governance undertaken if we permit that vice to sprout in churches or in ecclesiastical businesses and men. Hence it is that we command your fraternity by apostolic writings, under precept, that, if any sons of priests of your province hold churches in which their fathers

ministered as personae or vicars with no intervening person, you shall not delay in removing them from those churches, with contradiction and appeal ceasing, whether they were begotten during the priesthood or not.

But if there are any sons of clerics who obtained, with other persons intervening, churches that their fathers held, provided that they are suitable you will be able to sustain them in those churches; in such a way that, if one man possesses several churches that his father held and one of them can suffice for him, you shall cause him to be content with whichever one he prefers, provided that they are not such that the others are known to depend upon one of them.

Chapter XII

Latin source headnote: A legitimately born son of a bishop can be promoted to orders and receive a benefice in his father's church.

Clement III, to the Archbishop of Cashel.

In addition, on your part it was reported to our ears—(*And below:*) Your fraternity asked us whether those begotten by pontiffs can be promoted to sacred orders if they are approved in knowledge and uprightness of morals. Let your fraternity know that, if they were procreated from lawful marriage and no other canonical impediment stands in the way, they can lawfully ascend to sacred orders and obtain a benefice in the same churches over which their parents preside or even presided.

Chapter XIII

Latin source headnote: A son cannot be vicar of the church in which his father was the immediately preceding rector.

The same.

Michael, priest of Saint Germanus, showed by a complaint transmitted to us that, when he had canonically obtained the church of Saint I. of Corona in your diocese, M., the son of Antony, who held the personatus of that church immediately before him, asserts that its vicarage pertains to himself.

Therefore, because successions to prelacies and ecclesiastical dignities in a church are condemned by the canonical statutes, we command your fraternity by apostolic writings that, after the truth has been more diligently investigated, if it is established for you that the same M. was the son of Antony, who, as we set forth above, held the personatus of the same church immediately before, you shall not postpone imposing perpetual silence upon him concerning the same vicarage, with every contradiction and appeal ceasing.

Chapter XIV

Latin source headnote: One illegitimately begotten, even from a wife, cannot without dispensation be promoted to orders or benefices.

The same.

We have received the letters of your affection containing the vow and origin of the bearer of the present letters. Indeed, we have understood that H., begotten during priesthood, born and conceived

of a lawful wife, moved by a laudable vow desired from childhood to minister to the Lord in the clerical office. But although paternal incontinence is known to be repelled in every way from the sons, and for the caution of priests their sons are removed from sacred orders according to the canonical enactment, it is not expedient that we assent to the prayers of persons supplicating in such matters in such a way that we seem more easily to furnish to others some hope of obtaining similar things. But lest, because of the affection of his petition, when he has humbly approached the Apostolic See, he should grieve that he was altogether defrauded, by the present writing we signify to you that, provided he is otherwise found worthy, we permit him to be ordained as a cleric and promoted to an ecclesiastical benefice from which he can suitably be supported.

Chapter XV

Latin source headnote: An illegitimate person ought not to be prebended in his father's church.

Innocent III.

Since you ought to love the beauty of the house of God [and the place of the tabernacle of his glory, you must with careful solicitude take precautions lest in the churches committed to you those things be rashly presumed that seem either to extinguish in them the lamp of religion or to stain the purity of the Lord's ministers. For you should know that it has reached our hearing that certain persons established in your dioceses, publicly contracting with women, do not fear to assume ecclesiastical dignities; and that certain canons of churches, whose loins according to the word of evangelical truth ought to be girded and in whose hands the lamps of good work ought to burn, have rotted to such a degree in the filth of luxury that they are not even willing to veil their ignominy and shame. Rather, they draw with them to the ministry of the altar, of which they render themselves unworthy, sons received from an infamous generation—as though their incontinence were not known sufficiently to the reproach of the clerical order unless testimony speaking against them from the sons brought forth in public were proved by continual display.

And since in churches in which clerics of this kind have a place many things are enormously attempted, while in those churches the leavened kinship of fathers and sons, and even of nephews and relatives by affinity, ministers in a disorderly manner—because, with carnal love prevailing, spiritual reverence has grown cold among them, whence not one refrains on account of another from doing anything through their insolence—] sometimes games, etc. (cf. c. 12, On the Life and Uprightness of Clerics, III.1.)

You shall also not permit prebends to be conferred upon the sons of canons in the same churches of which their fathers are canons, since it is indecorous that in the office of the altar an illegitimate son minister to an unchaste father, in which the only-begotten Son of God is offered as a victim to the eternal Father for the salvation of the human race. But the aforementioned, etc. (cf. c. 12, On the Life and Uprightness of Clerics, III.1.) [Given at Rome, at Saint Peter's, on the sixth day before the Ides of January, in the ninth year, 1207.]

Chapter XVI

Latin source headnote: If an illegitimate person, especially a spurious son, is instituted in a church in which his father is instituted, the institution is not valid, and the one instituting is to be suspended from his benefices.

The same, in the General Council.

To abolish the worst corruption that has taken root in many churches, we firmly prohibit the sons of canons, especially spurious sons, from becoming canons in secular churches in which their fathers are instituted; and if something has been presumed to the contrary, we decree that it is not valid. But those who presume to make such persons canons, as has been said, shall be suspended from their benefices.

Chapter XVII

Latin source headnote: No one other than the Pope dispenses so that a son may immediately succeed in his father's church.

Honorius III.

Our beloved son G., Provost of the church of Saint Mary in Bruges, showed by a petition transmitted to us that Virgil, a priest of the diocese of Tournai, holds to the scandal of many a certain church having the care of souls, which his father held with no one intervening, contrary to the statutes both of the Lateran Council and of the General Council. The same provost diligently admonished him to resign it; but Virgil, asserting that H. of good memory, Archbishop of Reims and then legate of the Apostolic See, dispensed with him, contradicts the doing of this, although a dispensation was not granted to him by the Roman Pontiff.

Wherefore, with the assent of the procurators of both parties, we command your discretion that, after the parties have been summoned and the matters set forth on each side heard, notwithstanding any dispensation that did not emanate from the Apostolic See, you establish what is canonical, appeal being set aside.

Chapter XVIII

Latin source headnote: An illegitimate person cannot without the Pope's dispensation be promoted to a dignity, personatus, or benefice having the care of souls.

Gregory IX, to the Archbishop of Tours.

The uprightness of the Church is excessively deformed in your province by the fact that the sons of priests and others not lawfully born are promoted without a dispensation of the Apostolic See to dignities and personatus, and to other benefices having the care of souls. Wherefore we command that, after the aforesaid persons have been altogether removed from the personatus, dignities, and benefices of this kind, you cause them to be conferred upon suitable persons by those to whom you know their collation belongs by law. And we more strictly prohibit this from being presumed hereafter.

Title XVIII: On Slaves Not to Be Ordained and Their Manumission

Chapter I

Latin source headnote: A slave ought not to be ordained before full manumission.

From the Council of Toledo.

Laymen are furthermore to be instructed so that they know that they can in no way manumit in another place their own slaves whom they have decided are to be gathered into the Lord's camp, except in the sacrosanct church according to the order indicated above. For how can clerics obtain liberty outside the church, who are strangers to worldly law and who are forbidden to proceed to secular judgment? How are they absolved from the yoke of servitude by secular judgment?

But perhaps someone will say: one is not permitted to become a cleric unless, before clerical status, he obtains the dignity of free birth. He says what is truly true. And therefore, what can be invalidated or disparaged ought to be guarded against. Moreover, not only those who are to be promoted to clerical order are to be manumitted in the church, but also those whom anyone wishes to emancipate for the remedy of his soul, because it is so written in the pact of the Franks.

Chapter II

Latin source headnote: A slave ordained without his master's permission is deposed and restored to his master.

From the same council.

Concerning the ordination of slaves, who everywhere are indiscriminately promoted to ecclesiastical grades, it pleased everyone that agreement with the sacred canons [ought to be made, and] it was established that henceforth no bishop should presume to promote them to sacred orders unless they first obtain liberty from their own masters. And if any slave, fleeing his master or lying hidden, or employing witnesses hired by payment or corrupted, or through any cunning or fraud, reaches ecclesiastical grades, it is decreed that he be deposed and his master receive him.

But if a grandfather or father, migrating from one country to another, begets a son in the same province, and that son is reared there and promoted to ecclesiastical grades while ignorant whether he is a slave, and his master, afterwards coming, acquires him by the laws, it is enacted that, if his master wills to give him liberty, he shall remain in his grade. But if his master wills to draw him away from the Lord's camp by the chain of servitude, he shall lose his grade, because according to the sacred canons a person remaining of lowly condition cannot discharge the dignity of the priesthood.

Chapter III

Latin source headnote: A slave manumitted by the church can be ordained, and what he acquires after his death will belong to the church that manumitted him; if he accuses it or testifies against it, he is deprived of liberty and order.

From the same council.

It shall be permitted to constitute servants of the church as priests and deacons throughout the parishes, [provided nevertheless that rectitude of life and probity of morals commend them], in such a way that they first receive through manumission the status of liberty, [and thereafter succeed to ecclesiastical honors. For it is irreligious for those who receive the dignity of sacred order to remain bound by servitude.]

§ 1. But whatever shall have been granted to such persons through liberty, or become due by succession, or been conferred [by] anyone [in any] manner, it shall not be permitted to them to

transmit anything from it to outside persons; rather, after their death all things ought to pertain to the right of the church by which they were manumitted.

§ 2. To these persons, as [also] to the other freedmen of the church, access to accusing or testifying against the church shall be closed. If they aspire to do this, let them lack not only the benefit of liberty but also [also] the grade of honor that they merited not by dignity of nature but by necessity of the time.

Chapter IV

Latin source headnote: A master can retain spiritual services in a slave whom he manumits.

From the Council at Alichi.

Let no cleric be promoted to the grade of priesthood except as is contained in the canons. For if, from love of God, anyone has chosen one of his slaves, taught him letters, endowed him with liberty, and through intercession with the bishop caused him to be ordained priest, [and according to the Apostles gave him food and clothing], but that man afterwards, raised up into pride, refuses to observe the canonical hours and sing psalms for his master and to obey him justly, saying that he is free, and is unwilling to do so and as though free becomes the man of whomever he wishes, this holy synod anathematizes him and judges that he is to be barred from holy communion until he comes to his senses and obeys his master according to the canonical precepts.

But if with an obstinate mind he also scorns this, having been accused before the bishop who ordained him, let him be degraded and become the slave of that man—that is, of his own master—as he was born. But whoever keeps such a man with himself and, after he has heard the aforesaid matter concerning him, does not return him to his master or cast him away from himself, whether bishop, count, cleric, or layman, bound by fellowship in his anathema, shall undergo the penalty of excommunication.

Chapter V

Latin source headnote: Spurious sons or slaves ought not to be ordained.

Alexander III, to the Archbishop of Tours.

Your fraternity consulted us whether it is permitted to you to promote spurious sons and slaves to orders. Concerning this, indeed, we respond thus to your consultation: you ought to ordain neither spurious sons nor slaves; and, if you remember, it was said to you at your consecration: "See that you do not presume to promote anyone of servile condition to orders."

Chapter VI

Latin source headnote: One manumitted by a church so that he may become a cleric and perpetually serve that church in divine things cannot transfer himself to another church; it is otherwise if he was manumitted purely. Or thus: it is otherwise if he was manumitted so that he might serve. Johannes Andreae.

Innocent III, to the Bishop of Varia.

The more willingly [we respond to your inquiries, the more devoutly you venerate the Apostolic See]. (*And below:*) You added another question: whether the sons of those who are held to a church in servile condition, delivered by their parents to the clerical military service with the acquiescence of their masters so that they ought to serve God in the same church to which they belong, obtaining liberty on that account, can after a time leave it and transfer themselves to another.

On this point we believe that a distinction must be made: whether they were manumitted under this tenor and bound to the clerical order, that for as long as they lived they ought to furnish service to the church that manumitted them in the services of divine things, in which case permission to transfer themselves to another is to be denied to them; or whether they were manumitted absolutely and thus possess liberty to pass to another. [Given at Viterbo, on the fifth day before the Ides of June, in the year 1207.]

Chapter VII

Latin source headnote: The law concerning a slave made a deacon ought also to be understood concerning a subdeacon.

The same.

We wonder not a little [at your prudence that, although the consultation directed by you to us, if you take pains to inspect the canons and laws, is thought to contain almost no doubt, you took care to consult our apostolate concerning what is certain], since it is certain in the constitutions of the ancients when slaves ordained to ecclesiastical grades ought or ought not to be recalled into servitude. [Hence, because we believe that you are not ignorant of the decrees, we will your fraternity to do nothing else on this point except what is found in their enactments.]

Concerning the order of subdeacon, [nevertheless], because no express mention of it is made in the statutes of the Fathers, it seems to us that it too enjoys the same privilege as the grade of deacon. For although it was not regarded as a sacred order in the primitive Church, nevertheless, from the constitution of Gregory and Urban II, it is by no means doubted in modern times to be a sacred grade. [Given at the Lateran in the same year.]

Chapter VIII

Latin source headnote: One born of a father who is a slave and a free mother is free and is lawfully promoted.

Gregory IX, to the Archbishop of Naples.

Our beloved son G., a deacon, set forth that I., a knight, on the occasion that he asserts the deacon's father to be his man, presumes to impede him from being promoted as priest, although his mother, whose condition he ought to follow, is known to be free. Wherefore we command that, if the foregoing is established for you, you restrain the same knight from continuing an impediment of this kind.

Title XIX: On Whether Those Bound to Render Accounts Are to Be Ordained

Sole Chapter

Latin source headnote: One bound to render accounts can be ordained after laying aside the burden and rendering an account, but not before.

From the Council of Carthage.

Magnus, Bishop of Augusta, said: "What seems good to your affection? Ought procurators, agents, executors, or guardians of wards to be ordained?" Bishop Gratus said: "If, after their burdens have been laid aside and their accounts rendered, the acts of their life have been approved in all things, they ought, if they have been postulated, to be furnished with the honor, with praise to God. For if, before freedom from their businesses or offices, they have been ordained by someone without consideration, the Church is defamed." Everyone said: "Rightly, indeed, has your holiness established this, and therefore such is our judgment."

Title XX: On Whether Those Maimed in Body Are to Be Ordained

Chapter I

Latin source headnote: A priest who lost part of a finger in a duel can, by dispensation of his bishop, minister in his order.

Alexander III.

But concerning the priest of Campania who voluntarily offered a duel and accepted it when offered, and lost part of a finger in it, as formerly, so also now, we respond to your prudence that, since he, as we ourselves also see, has not lost so much of the finger that he cannot solemnly celebrate without scandal, after penance has been performed you can act mercifully with him and permit him to minister in his order, although his excess was very grave. [But the priest, etc.; cf. c. 7, On Homicide, V.12.]

Chapter II

Latin source headnote: One having a blemish in his eye that does not cause great deformity can be promoted even to the episcopate.

The same, to the Bishop-Elect of Chichester.

When a question had been raised in the presence of us and our brothers concerning your election and that of others who were elected in certain English churches, and certain matters were objected against each of you, it was objected against you that you have a blemish in your eye and that you were the son of a canon. Hence we gave a mandate to the Archbishop of Canterbury, legate of the Apostolic See, that, because you are said to be the son of a canon, he should proceed in your promotion from abundant dispensation. But concerning the blemish that you are said to have in your eye, we commanded the aforesaid archbishop that, with the counsel of his suffragans, and especially of our venerable brothers the Bishops of Worcester and Exeter, he execute what should seem good to him as a result.

You, therefore, brother, shall take pains humbly and devoutly to request the same archbishop concerning these matters. In this, from the greatest dispensation, we have taken care solicitously to provide for you in this matter, inasmuch as we love your person with sincere charity and gladly attend, insofar as we can according to God, to your advantage and honor.

Chapter III

Latin source headnote: One castrated in his cradle is lawfully promoted.

Clement III, to the Bishop of Varia.

On behalf of Bartholomew, a monk and deacon, a petition was presented to our apostolate that, when he had been castrated in his cradle, afterwards, devoutly serving God under a rule and an abbot, he was promoted to the order of diaconate. Hence he humbly sought that the faculty be granted to him by the Apostolic See that it be lawful for him to be ordained priest.

Indeed, since according to the statutes of the Council of Nicaea those who, while healthy, cut themselves off or desired that they be cut off by others are prohibited from entering the clerical order and, even if they are in the clergy, ought to cease, we do not believe that any impediment is brought against him so that he cannot be promoted, since he was castrated in his cradle. For he does not seem to have desired this at a time when he did not possess judgment of mind, especially since it is manifestly enacted in the canons of the Apostles that a eunuch, if he was made so through the snares of men, or was born so, or even had his male parts cut off in persecution, can, if he is worthy, be promoted as bishop. Therefore, after you have ascertained the substance of the truth, if you know that truth is present in his prayers and he is found otherwise worthy, especially since he has persevered for a long time in the monastic order, by the authority of the present letters we grant permission to promote him as priest.

Chapter IV

Latin source headnote: A priest who without cause caused his male parts to be cut off, believing that he thereby merited, will, by dispensation of the bishop, be able to exercise his office apart from the ministry of the altar.

The same, to the Archbishop of Ravenna.

R., Archpriest of Saint Stephen of Longasco, signified to us that B., a priest, believing that he was furnishing service to God, caused his male parts to be amputated. But since the same archpriest is burdened with old age and is unable to do without the aforesaid priest, he humbly supplicated us that we ought to grant the priest permission to minister in those things that pertain to a priest apart from the Mass. Wherefore we command that you diligently inquire into the truth and, if you find the already-mentioned priest otherwise worthy of God, relying upon our authority and your own, grant him the priestly office without any ministry of the altar, as you shall see to be expedient.

Chapter V

Latin source headnote: A priest who for a just cause caused his male parts to be cut off can exercise the priestly office as before.

Innocent III.

On behalf of our beloved son M., a priest, it was set forth in our hearing that, when he felt the danger of leprosy threatening him, on the counsel of a physician he caused his male parts to be cut off so that he could be freed from so grave an affliction of illness, and he humbly sought from us that we provide for him concerning execution of his office. Therefore, because the canons of the holy Fathers do not prohibit him from the ministry of the sacred altar, we command your fraternity by apostolic writings that, if it is so and the aforesaid M. is otherwise suitable to execute the office of his ministry, relying upon apostolic authority you grant him free faculty to do so, notwithstanding any contradiction or appeal. [Given at the Lateran, on the fourth day before the Ides of February, 1198.]

Chapter VI

Latin source headnote: One maimed in a hand, if promoted as abbot, is deposed from the abbacy.

The same, to the Bishop of Mileto.

Appearing in our presence, you explained to us that I., your former predecessor, promoted H. as abbot, not knowing that he was maimed in one hand. But because the abbot himself is known to lack his left hand, you wished to be taught by our response what is to be done concerning this. We therefore respond thus to your fraternity: since, because of so enormous a defect, he cannot be promoted to sacred orders, and he fraudulently kept silent about it at his promotion, he is not undeservedly to be removed from the office of the abbacy. [Given at Rome, at Saint Peter's, on the fifth day before the Kalends of July, 1198.]

Chapter VII

Latin source headnote: One lacking the nail of his thumb, provided that he is strong in the thumb, is lawfully promoted to the priesthood.

Honorius III, to the Bishop of Angoulême.

Thomas, a monk of Saint Amantius of Brixia, set forth before us that, when he was in his boyhood years, a certain iron bar, falling by chance upon the thumb of his right hand, tore the nail from it. But since, as he asserts, he desires to serve the Lord in the priestly office, he humbly supplicated us that we command you, who are his diocesan bishop, to promote him as priest. Wherefore we command your fraternity that, if he is capable in that thumb of breaking the Eucharist and no other canonical impediment stands in the way, you shall not omit because of a deformity of this kind to promote him to the order of priest.

Title XXI: On Bigamists Not to Be Ordained

Chapter I

Latin source headnote: It is brief.

From the Council of Orléans.

Let bigamists, penitents, or husbands of repudiated women not ascend to the priesthood.

Chapter II

Latin source headnote: No dispensation is granted to a bigamist who has been ordained to sacred orders, and the one ordaining will be deprived of the power of ordaining unless a dispensation is granted to him.

Lucius III, to the Archbishop of Spalato.

Concerning the matter on which your fraternity asked us what is to be done about bigamists, we respond thus to your inquiry: those who ordain them are to be deprived of the power and office of ordaining, and those ordained, if they were promoted to sacred orders, are to be deprived of their orders for this reason, because it is not permitted to dispense contrary to the Apostle with bigamists so that they may be promoted to sacred orders or, if promoted, may remain in them in any way. But a dispensation can be employed with the one ordaining so that he is not deprived of the power and office of ordaining. [Concerning one simoniacally, etc.; cf. c. 22, On Simony, V.2.]

Chapter III

Latin source headnote: A bigamist is not ordained, whether his wife is living or dead.

Celestine III.

Concerning bigamist priests [however] and husbands of widows, we enact altogether the same: that they ought not to be admitted to the celebration of divine things whether their wives are living or dead, especially since this is alien to the doctrine of the Apostle and the institutions of the Church.

Chapter IV

Latin source headnote: One who, after his wife's death, was promoted to sacred orders and then contracted de facto with a second woman and knew her carnally incurs the penalty of bigamy, although he is not a bigamist.

Innocent III, to the Bishop of Regensburg.

Recently by us—(*And below:* [cf. c. 29, On the Sentence of Excommunication, V.39.]) The third and final point of the inquiry seemed to contain no small question, because in contracting marriages it is not the effect of law but the purpose of the mind that is regarded; hence infamy accompanies the one who has two wives at the same time. This seems in part to be referred to the deed, just as what is read in the canon concerning a priest who is held by unlawful nuptials; by the same censure such persons seem to be reckoned among bigamists.

On the other side, however, it stands in the way that truth is to be preferred to opinion, and that according to the foregoing one who had no wife would have to be reckoned a bigamist, which would occur if someone contracted de facto with different women to whom by law he could not be joined matrimonially. We, however, respond to you in this question that, since it is not permitted to dispense with clerics of this kind as with bigamists—clerics who, insofar as it lay in them, matrimonially joined second women to themselves—although in truth they are not bigamists, this is not because of a defect of the sacrament but because of the disposition of intention with the deed following upon it. [Given at the Lateran, on the seventeenth day before the Kalends of June, 1199.]

Chapter V

Latin source headnote: One who contracted with a virgin, although she had previously been espoused by another, is not judged a bigamist.

The same, to the Bishop of Metz.

The debt of the pastoral office—(*And below:* [cf. c. 4, On Baptism, III.42.]) The second point of your doubt contained the question whether one who matrimonially joined to himself a woman who had been led home by another man but not known carnally by him can be promoted to the priesthood.

Although one who has taken as wife a woman left by another, whether she had been known carnally by him or remained unknown, seems to have taken a widow as wife, inasmuch as her husband was dead when he married her—just as he seems to be a bigamist who lawfully contracted with two wives, whether he knew neither carnally or only one of them, because he was the husband of two wives—we nevertheless have decided to respond thus to your fraternity.

There are two things in marriage, namely the consent of minds and the mingling of bodies. One of them signifies charity, which consists in spirit between God and the just soul, to which pertains what the Apostle says: "He who cleaves to God is one spirit with him." The other signifies the conformity that consists in flesh between Christ and the holy Church, to which pertains what the Evangelist testifies: "The Word was made flesh and dwelt among us." Therefore, that marriage which has not been consummated by the mingling of bodies does not pertain to signifying that marriage which was contracted between Christ and the Church through the mystery of the incarnation. Thus Paul, expounding what the first-formed man had said—"This now is bone of my bones and flesh of my flesh, and for this reason a man shall leave father and mother and shall cleave to his wife, and the two shall be in one flesh"—immediately adds: "But I say that this is a great sacrament in Christ and the Church."

Therefore, since because of a defect of the sacrament it is prohibited that a bigamist or husband of a widow presume to be promoted to sacred orders—because neither is she the one woman of one man, nor is he the one man of one woman—certainly, where the mingling of bodies is lacking between spouses of this kind, the seal of this sacrament is not lacking. Hence, one who married a woman who had been married by another man but by no means known carnally by him, because neither she nor he divided their flesh among several persons, ought not on this account to be impeded from being promoted to the priesthood. [Given at Faenza, on the fifth day before the Kalends of September, in the ninth year, 1206.]

Textual note: The source prints *non deest huiusmodi signaculum sacramenti* ("the seal of this sacrament is not lacking"), although the immediately preceding argument may appear to call for the opposite. The printed reading, also present in the Friedberg-derived reference, is retained.

Chapter VI

Latin source headnote: One who has had several concubines is not for that reason a bigamist.

The same, to the Archbishop of Lyon, legate of the Apostolic See.

Because human understanding frequently fails concerning the least [and the greatest matters, it belongs to a prudent man to inquire where a scruple of doubt occurs]. Indeed, you sought to be

taught by the Apostolic See whether priests successively having several concubines are to be judged bigamists, [so that you cannot dispense with them as irregular persons concerning execution of their office]. (*And below:*) To this we have decided to respond [thus]: since the aforesaid priests, whether at one or at different times, had several concubines, they did not incur the irregularity of bigamy. You will be able to dispense with them, as men marked by simple fornication, concerning execution of the priestly office, [if they take care to live continently. Concerning priests, etc. Given at Segni, on the fifth day before the Nones of October, in the sixteenth year of our pontificate, 1213.]

Chapter VII

Latin source headnote: A subdeacon who contracted with a widow and knew her carnally incurs the penalty of bigamy, although he is not a bigamist.

The same.

It was by us—(*And below:*) But the man who, constituted in the order of subdiaconate, took a widow as wife only de facto, because by law he could not do so, certainly did not become a bigamist. Nor can he in truth be called the husband of a widow, since no marital bond was contracted between him and her. Nevertheless, contrary to the doctrine of the Apostle, it is not permitted to dispense with him as though with the husband of a widow, not because of a defect of the sacrament but because of the disposition of intention with the deed following upon it.

Title XXII: On Foreign Clerics

Chapter I

Latin source headnote: Those from overseas and very remote places ought to prove their ordination through the seals of five bishops.

Alexander III, to the Bishop of Le Mans.

Your fraternity decided to consult us concerning what is to be done about clerics who, ordained in remote regions, display letters of those by whom they claim hands were imposed upon them, when it remains uncertain whether the seals that they present are those of bishops. We therefore respond to your consultation by notice of the present letters that it is safer for the statutes of the ancient Fathers to be observed in these matters than for anything new to be established.

It was established concerning those from overseas that they be fortified by the testimony of at least five bishops concerning their ordination, which we believe is also to be observed concerning others if they are similarly unknown, yet in such a way that they are held under suspension for some time, during which those seeing them may be more fully instructed concerning their conduct. Inquiry also ought to be made concerning the lower orders, because it could happen that, with some omitted, they made a leap. These matters having been completed, if they are found worthy, a dispensation can be made concerning them. [But concerning that, etc.; cf. c. 15, On the Office of a Delegate, I.29.]

Chapter II

Latin source headnote: A foreign cleric who swears that he was ordained, unless he proves it otherwise, will neither be received in that order nor promoted to higher orders.

Innocent III, to the Patriarch of Constantinople.

Among four—(*And below:* [cf. c. 8, On Greater Authority and Obedience, I.33.]) Your fraternity again consulted us whether you ought to promote to higher orders clerics coming to you without letters from those who ordained them and offering to furnish a corporal oath that they are constituted in any one of the ecclesiastical orders. We therefore respond thus to your inquiry: unless their canonical ordination is established for you through suitable arguments, you ought neither to receive them in those orders nor to promote them to greater orders, especially before their conduct has been approved. [To be taught also, etc. Given at Ferentino, on the fourth day before the Nones of August, in the ninth year, 1206.]

Chapter III

Latin source headnote: A foreigner whose ordination is not established is not permitted to celebrate in public, but may do so in secret.

The same, to the Patriarch of Jerusalem.

The discretion of your fraternity sought to be taught by the Apostolic See whether you ought to permit those clerics who come to the regions of Jerusalem without letters commendatory to celebrate divine things, since most of them, whose canonical ordination is not established, as soon as they come presume to celebrate without seeking permission. But we, commending your solicitude in the Lord, respond concerning the first point that, unless their canonical ordination is lawfully established for you either through letters or through witnesses, you ought not to permit those who are altogether unknown to celebrate among your peoples; but if perhaps any of them should wish from devotion to celebrate secretly, you will be able to tolerate it. [Concerning the second, etc.; cf. c. 3, On Apostates, V.9. Given at Rome, at Saint Peter's, on the second day before the Kalends of February, in the ninth year, 1207.]

Chapter IV

Latin source headnote: Inferior prelates cannot institute foreigners in their churches without the consent of the diocesan bishops.

Honorius III, to the Bishop of Reginus.

Through your report we learned that certain prelates of churches under your jurisdiction do not fear to institute clerics from other bishoprics in churches committed to them without your knowledge and assent. Therefore, considering that this is permitted to them for no reason, since it is contrary to honor and alien to the institutions of the holy Fathers, after the example of Pope Alexander of happy memory, our predecessor, we respond thus to your inquiry: if any clerics from other bishoprics have been, or shall in the future be, instituted in churches under your jurisdiction without your knowledge and assent, you are permitted by our authority, appeal being set aside, to remove them from there, unless by dispensation you decide that some of them are to be left in those churches.

Title XXIII: On the Office of the Archdeacon

Chapter I

Latin source headnote: It sets forth what pertains to the office of the archdeacon.

From the Book of the Roman Order.

Let the archdeacon know that after the bishop he is the bishop's vicar in all things, and that all care in the clergy pertains to him, both of those placed in the city and of those known to dwell throughout the parishes, whether concerning their conduct, the honor and restoration of churches, the teaching of ecclesiastical persons, or zeal for other matters; and he will render an account before God for those who transgress. And every third year, if the bishop cannot do so, let him travel throughout the entire parish and, in the stead of his bishop, correct and amend all things that need amendment.

Chapter II

Latin source headnote: It is not summarized, but sets forth certain things that pertain to the office of the archdeacon.

From the Council of Toledo.

The office of the archdeacon is to read the Gospel when he wishes, or to command one of the deacons to do so; and, when the bishop sings Mass, at his command the Levites shall clothe themselves in sacred vestments, in the manner in which they are to proceed to Mass with the pontiff. He himself ought to deliberate, order, and execute every complaint or cause or matter of justice of priests, deacons, or subdeacons. Therefore, as a vigorous, provident, and cautious man acting in place of his bishop, he shall have care of the entire bishopric, and:

§ 1. Providing for every ecclesiastical office, he ought to assign the readings or responsories in the cathedral church and to hear them, to such a degree that no one reads or sings the Gospel, Epistle, responsories, or any reading in the church until he first reads or sings it before the archdeacon and is heard by him.

§ 2. He shall also order the acolytes—which of them ought to carry the candlesticks, which the thurible, and which of the minors ought to perform any offices in the church.

Chapter III

Latin source headnote: Custody of the vessels of the church pertains to the archdeacon.

Gregory III, to the Archdeacon of Salona.

We grieved when we learned the things that you and your bishop directed in writings to us against one another, because charity recognizes nothing between you. Nevertheless, we command you to administer in the office of your order; and if there, with grace prevailing, the cause of your scandal can be terminated, we believe much to have been gained for your soul. But if discord has so armed its parties between you that your will is to remain in the swelling of scandal, you shall come without distinction to our hearing, and your bishop shall direct for himself whatever instructed person he chooses, so that, after all things have been weighed with subtle reasoning, we ought to establish what shall seem good to the parties.

We will you to know, however, that we will inquire strictly from you because neither the things of your own church nor the treasures collected from different churches are preserved with all solicitude and fidelity. But if anything of them has perished through negligence or anyone's fraud, you are bound by guilt in this, for through the order of the archdeaconry you are more strictly deputed to the custody of that church.

Chapter IV

Latin source headnote: An archdeacon does not commit the care of souls without the bishop's mandate; that is, he does not possess an institution capable of authorization.

Alexander III, to the Archdeacon of Ely.

Since it is sufficiently absurd and alien to the institutions of the holy Fathers that an archdeacon by his own authority should commit the care of churches to anyone, we bear it exceedingly ill that you commit the care of souls to persons without the mandate of your bishop. Therefore, because you ought not, with a view to any custom, to contravene the constitutions of the holy Fathers and claim what does not pertain to your office, we command that hereafter you not presume to commit the care of souls to anyone without the permission and mandate of your bishop.

Chapter V

Latin source headnote: By common law an archdeacon cannot excommunicate. Antonius de Butrio.

The same, to the Bishop of Worcester.

By ecclesiastical institution it does not seem to be permitted to archdeacons to promulgate a sentence against anyone unless the authority and consent of the bishops have acceded.

Chapter VI

Latin source headnote: An archdeacon visits his province, that is, his parish, once a year unless necessity requires more. This is what it says.

The same, to the Bishop of Coventry and the Abbot of Chester.

We command that you prohibit R., Archdeacon of Chester, from presuming to fine with a pecuniary penalty clerics or laymen who are to be punished for their excesses; to extort anything from any man or woman in an ordeal by fire or water; to suspend persons or place churches under interdict for an annual and undue exaction of money; or to approach the churches of his archdeaconry for visitation except once a year, unless perhaps such a cause has arisen on account of which it is fitting that he visit the aforesaid churches more often. And then let him do so with such moderation of men and mounts that those who dwell in them ought not deservedly to complain as a result.

But if he presumes to contravene your prohibition, you shall strike him with ecclesiastical severity, with every occasion and appeal ceasing, and shall cause the sentence itself to be inviolably observed until worthy satisfaction, so that we are not compelled to avenge this more harshly upon you and them.

Chapter VII

Latin source headnote: It says first what the office of the archdeacon is and in what respect the bishop is relieved through it. Second, it says that rural deans are to be elected and removed by the bishop and archdeacon if they jointly discharge the functions of both.

Innocent III.

To these things we do not say—(*And below:*)

§ 1. Indeed, the devotion of your fraternity consulted us as to what ought to pertain to the office of the archdeacon and in what matters the care of episcopal solicitude ought to be relieved through him. We, insofar as we can, respond that, according to the statutes of blessed Isidore, the archdeacon commands subdeacons and Levites; the solicitude and ordering of parishes pertain to him, and he ought to hear the disputes of individuals.

§ 2. Archpriests, moreover, who are called deans by many, should know that they are subject to his jurisdiction.

§ 3. According to the constitution of the Roman Order, he is found to be the greatest after the bishop and the vicar of the bishop himself, furnishing all solicitude and care, both toward clerics and toward their churches, as well as he can according to God, since he will render an account concerning these matters in the judgment of the strict examination.

§ 4. Likewise, in a certain letter of blessed Pope Clement, our predecessor, the archdeacon is called the eye of the bishop, so that, looking throughout the bishopric in the bishop's place, he may correct and amend the things that he sees are to be corrected, unless the affairs are so arduous that they cannot be terminated without the presence of his superior.

§ 5. In a certain constitution of ours, however, we remember that on another occasion we expressed that corporal institution concerning both benefices and dignities ought to pertain to him, as well as the examination of clerics if they are to be promoted to sacred orders. And we believe that this same thing is to be observed in collations of benefices, so that those who are to be placed over ecclesiastical benefices are first examined by their archdeacon and afterwards presented through him to the bishop.

§ 6. Subsequently you then asked whether rural deans, who are appointed for a time, ought to be instituted or removed, if they are to be removed, at your mandate alone, or that of the archdeacon, or even that of both. To this we respond briefly that, since according to the authority of the imperial enactment what touches all ought to be approved by all, and since the dean exercises their common office, he is to be elected, or even removed, jointly.

Chapter VIII

Latin source headnote: An archdeacon does not give letters commendatory for orders.

The same.

You signified—(*And below:*) You shall forbid your archdeacon from granting his letters to those to be promoted without your knowledge and authority, and shall also strictly prohibit them from daring to hasten to orders in such a manner. If they presume to contravene your prohibition, you shall entirely

forbid them execution of the orders received. [Given at the Lateran, on the fifteenth day before the Kalends of October, 1199.]

Chapter IX

Latin source headnote: An archdeacon examines and presents those to be ordained and places prelates in their seat.

The same.

So that our—(*And below:*) [(cf. c. un., That the Benefices of a Church, III.12.) But because the excesses of greater persons ought to be punished with greater severity, since according to the oracle of divine law, "if the priest who is anointed sins, he will cause the people to transgress," with the common counsel of our brothers we invalidated what you dishonorably presumed concerning the retention of revenues. And, as a penalty for presumption of this kind, so that you may be punished in that in which you had sinned, we have decreed that you are to be suspended from the collation of the dignity or ecclesiastical benefice that shall first become vacant for your grant in your church.

But because, with divine scripture teaching, we have learned that a wise man is better than a strong man, and one who rules his spirit than one who takes cities, however much we have willed or would will—if we could with justice preserved, contrary to which we judge that we cannot act, since we are constituted in the seat of justice—that the aforesaid chancery be conferred upon our aforesaid subdeacon, nevertheless we have not found the often-mentioned H. de Lamp. so blameworthy that, with justice requiring it, we can deprive him of that chancery. For, although his relatives transgressed through simplicity, nevertheless giving or even promising nothing for it, he himself received investiture of the chancery as a true canon and one against whom, by reason of the canonry, no defect could be opposed by law, without any pact or agreement.]

Nor was it [even] sufficiently proved that the chancellor by virtue of his office exercises the spiritual functions mentioned, since rather by common law they pertain to the office of the archdeacon, namely, to present those to be ordained to the bishop and to examine them, and to place abbots and abbesses in their seat. [Since it has been proved that these, etc. Given at Perugia, on the ninth day before the Kalends of October, 1198.]

Chapter X

Latin source headnote: Archdeacons have no jurisdiction in monasteries except insofar as general or special custom grants it to them.

Honorius III, to the Abbot of Arimanum in the diocese of Troyes, and to the Archdeacon and Dean of Saint Stephen of Troyes.

To our beloved son—(*And below:*) At the petition of the Archdeacon of Sens, who complained that the abbot and convent of the monastery of Saint-Pierre-le-Vif at Sens contrary to justice denied him the annual procuration and certain other things pertaining to him by reason of his archdeaconry, we gave a mandate to the Abbot of Saint-Crépin and his colleagues that they should hear a cause of this kind and terminate it with the due conclusion.

Before them the aforesaid archdeacon sought that, since the same monastery is situated within the bounds of his archdeaconry, the aforesaid abbot and monks should obey him in those things that

pertain to jurisdiction, correction, reconciliation, and visitation, which he said belong to archidiaconal right: namely, that they should answer complainants before him, stand to law, and observe his just sentences; and, when cited, should also come into his presence to hear and observe, with their rule and the due obedience of their abbot preserved, his honorable and holy mandates according to God concerning correction of excesses and other matters that archdeacons are accustomed and reasonably able to enjoin.

He sought, moreover, that hereafter, with him passed over, they not cause any persons from the bailiwick of Sens to be convened before the official of the Archbishop of Sens, asserting that they ought first to be convened under him before the aforesaid official, only the special causes of the archbishop himself and of his men and household excepted.

Therefore, issue having been lawfully joined concerning the foregoing before the aforesaid judges and the matters set forth on each side having been heard by them, with the assent of both parties the same judges remitted the cause itself to apostolic examination. Thus, with the abbot and archdeacon themselves appearing in our presence, we, considering that their customs concerning the jurisdiction of archdeacons are diverse, could not reach a final proceeding in a question of this kind, since in this case we did not know the custom that the Archdeacon of Sens employs in the abbeys at Sens of the order of the aforesaid monastery.

But, willing that the due end be imposed upon the same question, with the assent of the abbot himself and the procurator of the other party, we have decided to commit the cause itself to you. Therefore, we command your discretion that you solicitously inquire into the truth concerning these matters through the senior canons of the church of Sens, who ought to possess fuller knowledge of a custom of this kind. Unless within three months after the edict of the first citation it is established for you through them that the aforesaid archdeacon or his predecessors, by a custom peacefully acquired in this manner, have until now possessed some jurisdiction in the monastery itself or in abbeys of this kind, you shall altogether absolve the aforesaid monastery from his claim, imposing perpetual silence upon the archdeacon himself concerning this.

But if it is established for you through the same canons that the archdeacon himself or his predecessors, by a custom acquired in this manner, have until now possessed some jurisdiction in that monastery or in other abbeys of this kind, you shall award him only that same jurisdiction in the aforesaid monastery which it is established that he or his predecessors possessed in the monastery itself or in the same abbeys, imposing perpetual silence upon him concerning the other matters, and proceeding in all the foregoing with the obstacle of appeal removed.

Title XXIV: On the Office of the Archpriest

Chapter I

Latin source headnote: The archpriest of a city is subject to the archdeacon and principally presides over priests and priestly offices.

From the Council of Toledo.

Let the archpriest know that he is subject to the archdeacon and is to obey his precepts as those of his bishop; and, as pertains specially to his ministry, that he is to exercise care of souls over all

priests placed in the priestly order, stand continually in the church, and, in the absence of his bishop, celebrate in his stead the solemnities of Masses and say the collect, or cause the person upon whom he himself enjoins it to do so.

Chapter II

Latin source headnote: To the same effect.

Pope Leo.

The ministry of the archpriest is constituted in this: that with diligent care he provide for the ministry of the cardinal priests, who ought to perform the solemn office in the communion of the body and blood of our Lord Jesus Christ, in such a way that he causes them in turn to assist one another so that, beginning from the sacrosanct Lord's day, they persevere unswervingly through all the canonical hours, so that the work of God may be performed worthily and holily by the one to whom it is committed, fearing the judgment of that wisest man where it is said: "Cursed is the man who performs the works of God negligently."

§ 1. Let the archpriest also provide for the life of the cardinal priests, obeying the precepts of his bishop, lest at any time they withdraw or grow torpid in buffoonery, but let them remember that the lips of priests guard knowledge and that they seek the law from his mouth, who is the angel of the Lord of hosts.

§ 2. If the bishop is absent, excepting those things that are prohibited, let the archpriest provide for all things that ought to be performed in the ministry of priests, [that is]: to bless fonts, anoint the infirm with oil, reconcile an infirm penitent after consulting the bishop, and enjoin upon all other priests the penance that pertains to the purgation of souls.

§ 3. On the principal feasts let him either solemnly fulfill the celebration of Mass himself, or let the one to whom it is committed at the command of his mouth perform it reverently.

Chapter III

Latin source headnote: It declares what the office of the city archpriest is. Antonius de Butrio.

The same.

It is established that the office of the city archpriest, when the prelate is absent there, is to begin the office in his stead, give priestly blessings in the church, sing Mass when he wishes, or command one of the priests to do so. But when the bishop sings Mass, he ought to instruct the priests to clothe themselves in sacred vestments and how they are to proceed to Mass. For he ought to command the custodian of the church that the Eucharist of Christ not be lacking in the sacristy for the infirm.

He ought to provide for the infirm and, in providing, to command the priests lest perhaps they die without confession or the strengthening of the body and blood of our Lord Jesus Christ; and, with all the priests, to receive the confessions of sins of those who come from outside, and thereafter through the provision of the pontiff he ought to employ great care toward them. All things for making Christians, baptizing infants, and bringing aid are also to be done by the priests at his command.

Chapter IV

Latin source headnote: A rural archpriest exercises care of the priests and laymen of his plebania; nevertheless, he can ordain nothing contrary to the bishop's decree.

The same, from the synod held at Ravenna.

Let each parish have an archpriest. On account of continual care toward the people of God, we will archpriests to preside over the individual parishes, who shall exercise solicitude not only for the unskilled common people but also guard with continual circumspection the life of those priests who dwell throughout the lesser titles, and shall report to their bishop with what industry each one exercises the divine work.

§ 1. Nor shall the bishop contend that the parish does not need an archpriest, as though he himself were able to govern it, because, even if he is very suitable, it is nevertheless fitting that he divide his burdens; and, just as he himself presides over the cathedral church, so let archpriests preside over the parishes, so that ecclesiastical solicitude wavers in nothing. Nevertheless, let them report all things to the bishop, nor presume to ordain anything contrary to his decree.

Title XXV: On the Office of the Primicerius

Sole Chapter

Latin source headnote: It sets forth those things that pertain to the office of the primicerius. Antonius de Butrio.

The same, from the Book of the Roman Order.

Let the primicerius know that he is under the archdeacon, as is the archpriest, and that it pertains specially to his care to preside over the teaching of deacons or the remaining persons placed in the order of ecclesiastical grades; that he himself is to apply himself to discipline and custody, since he will render an account before God for their souls; and that he himself is to give the deacons the readings that pertain to the night offices of clerics and to have zeal concerning each person, so that, in whatever matter he possesses a capable understanding, he may devote himself without any negligence [to it], or they may be instructed by one whom he commands.

Title XXVI: On the Office of the Sacristan

Sole Chapter

From the Council of Toledo.

Let the sacristan know that he is subject to the archdeacon, and that the custody of the sacred vessels, ecclesiastical vestments, and the whole ecclesiastical treasury pertains to his care, as do the things pertaining to lights, whether in wax or in oil, [or to the distribution of sacred chrism].

Title XXVII: On the Office of the Custodian

Chapter I

Latin source headnote: It sets forth what pertains to the office of the custodian. This is what it says.

From the Book of the Roman Order.

The custodian of the church, to whom the things belonging to the church are committed to be guarded, ought to obey the command of his archdeacon in all things. At the canonical hours the signals of the bells are to be sounded by him at the command of the archdeacon himself. Let him ceaselessly guard the palls or linens of the altar and all the utensils of the church. Let him be thoroughly vigilant in lighting and extinguishing the lamps and lanterns, lest the oil perish through their shining beyond measure or the church be darker through their shining too little; rather, let all things be done with discretion, which is known to be the mother of all virtues.

§ 1. But if the one to whom the church is delivered to be guarded is less suitable for performing this, let him be restrained by the archdeacon so that he correct himself. But if he remains untamed, let the archdeacon provide, by reporting it to the bishop, that the unfitting man be cast out and a suitable minister be appointed for the house of God, so that all things may be done to the praise and name of God, in such a way that God may be appeased in the church by those serving him.

Chapter II

Latin source headnote: To the same effect.

From the Council of Toledo.

The custodian ought to be solicitous concerning every ornament of the church, its lights, and incense; he ought also at all times to have bread and wine prepared for Mass, to sound the signal at each canonical hour with the consent of the archdeacon, and, with the same man's consent while the bishop is absent, to divide among the brothers all offerings, alms, and tithes.

§ 1. Holy mother Church ought to stand upon these three columns of the church, as the holy synod enacted, so that such persons as appear better and holier may be ordained to this work, so that no negligence may appear to exist in the holy Church of God. Let these three—the archdeacon, archpriest, and custodian—joined together with one mind, perform their duties providently and perfectly, and let there be neither envy nor jealousy among them.

Title XXVIII: On the Office of the Vicar

Chapter I

Latin source headnote: A vicar, if he afterwards obtains a benefice having the care of souls, will be deprived of the vicarage.

Alexander III, to the Bishop of Norwich and G., Archdeacon.

It has reached our hearing that G., a priest, presumes to vex and weary in many ways the monks of Ramsey and Thomas, his clerk, by seeking [his] vicarage of the church of Burnel, from which he withdrew twenty years ago, after obtaining a personatus in different churches. Therefore, because it

is not canonical that one who has the care of souls in different churches should exist as vicar in churches belonging to others, we command your discretion by apostolic writings, under precept, that, after the truth of the matter has been more fully investigated, if it is so, you more strictly compel the aforesaid priest to desist from seeking the aforesaid vicarage, with appeal and occasion removed, notwithstanding any letters that he obtained from us through an envoy with the truth suppressed. For things that proceed from the root of avarice and are contrary to the reason or enactment of the canons ought to be extirpated.

Chapter II

Latin source headnote: One person cannot have several vicarages.

The same, to the Bishop of Ely.

You shall provide [however] more attentively that you do not permit anyone to have several vicarages in your bishopric, because, since vicars are bound to serve personae and churches, it is alien to the order of law that anyone have more than one vicarage.

Chapter III

Latin source headnote: A perpetual vicar instituted by the bishop cannot be removed by the rector or defrauded of his portion.

The same, to the Bishop of Winchester.

In addition, if the persona of any church, with the assent and authority of the diocesan bishop, has assigned a certain portion to a vicar whom he instituted in the same church, the one who, after that persona has died, is substituted into the personatus of that church cannot remove the same vicar from the church or diminish the portion assigned to him, unless he commits something on account of which he is to be condemned by a judge in respect of the vicarage or benefice.

Chapter IV

Latin source headnote: A vicar cannot substitute a vicar.

The same, to the Bishop of Norwich.

Do not permit clerics [whether] constituted in the priesthood or in other lower orders to substitute others for themselves in the vicarages of churches that they have obtained, since this is sufficiently discordant and absurd, and contrary to all reason.

Chapter V

Latin source headnote: The Pope's vicar has jurisdiction in the City, not outside the City.

Innocent III, to the Abbot of Saint Eugenius and the Plebane of Saint Peter.

Our venerable brother [the Bishop of Volterra caused it to be shown to us by his representation that, when the clerics of the parish of Petiole had sworn to him that they would elect a provost according to the will of laymen, and, after the election had been celebrated in this manner, had presented the elect to him, he not only refused to confirm the election itself but also bound with the bond of excommunication both the consuls and the other laymen who had driven the aforesaid clerics to this

and the clerics themselves, for these and other matters in which they had been disobedient to him. And he obtained our writings to be directed to our venerable brothers the Archbishop of Pisa and the Bishop of Lucca, that, as the sentence had been reasonably promulgated, they should cause it to be firmly observed, appeal being removed, until suitable satisfaction.

But the opposing party obtained letters of our vicar, our venerable brother P., Bishop of Porto, to the same Bishop of Lucca and our beloved son P., cardinal-priest of the title of the Basilica of the Twelve Apostles; on the occasion of those letters they absolved the said laymen and clerics, promulgating a sentence against the aforementioned Bishop of Volterra, from which the same bishop, although he believed it to be null for many reasons, nevertheless from superabundance appealed to our hearing.]

We therefore, judging the vicar's letters to have been obtained through surreption, because the jurisdiction of a vicar whom the Roman Pontiff left in the City does not extend outside it unless this has specially been granted to him—especially when he dwells in his special province, namely between the province of Capua and that of Pisa—command your discretion by apostolic writings that you revoke as void whatever was done on the occasion of the letters, and cause the aforesaid sentence of excommunication, as it was reasonably given, to be firmly observed with the obstacle of appeal removed.

Chapter VI

Latin source headnote: Ordinary vicars are compelled to serve churches through withdrawal of revenues and vicarages.

Honorius III, to the Bishop of Worcester.

It was set forth before us on your part that certain persons in churches in which they obtain perpetual vicarages scorn to make due residence and to be promoted as priests. Therefore, unwilling, as indeed we ought not, to tolerate with equanimity an abuse of this kind, we command your fraternity that, appeal being removed, through withdrawal of revenues or of the vicarages themselves you compel the perpetual vicars to reside, as they are bound, in the churches in which they obtain vicarages, and to cause themselves to be promoted as priests, as their cure requires.

Title XXIX: On the Office and Power of a Delegated Judge

Chapter I

Latin source headnote: A delegate of the Pope has power not only over the parties but also over others who impede his jurisdiction.

Alexander III, to the Bishop of London.

Because it was asked of us on your part what is to be done concerning powerful persons who, when we command justice to be furnished to someone concerning those whom they love or wish to protect, compel the complainants to be silent through their threats or terrors, and thus our mandate is eluded, we respond thus to you: just as those acting and those consenting are punished with equal penalty by the testimony of scripture, so you will be able by ecclesiastical constraint to restrain both those who are drawn into the cause and their principal supporters, if you manifestly know that they impede justice.

Chapter II

Latin source headnote: When different letters under the same date and contrary form are obtained and presented by different persons to the same judges, execution of both is suspended until the Pope is consulted.

The same, to the Bishop of Bologna.

Indeed, if letters are first obtained from us concerning some cause and other letters are afterwards opposed, with no mention made of the earlier letters, if this becomes known to the judges, until they consult the Roman Pontiff and thereby learn his will more fully, they shall altogether suspend execution of both letters, lest through the diversity of the letters the conclusions of causes be impeded. Likewise, when, etc. [cf. c. 9, On Sentences and Res Judicata, II.27.]

Chapter III

Latin source headnote: A delegate of the Pope who is impeded can subdelegate a cause that can suitably be terminated without him.

The same, to the Bishop of London.

If, because of your weakness or any other grave cause or necessity, you cannot be present to conduct causes that are committed to you by the Apostolic See, let it be free to you to commit your functions to discreet and suitable persons, yet in such a way that, if the matter is of such importance, they ought to consult you—unless perhaps the causes are so grave that they cannot suitably be terminated without your presence.

Chapter IV

Latin source headnote: If a cause is committed to be decided before a certain day, unless the parties extend it, the jurisdiction expires through the lapse of the day. § 1. Where no certain penalty is established by law, the delegate imposes an arbitrary one. This is what it says.

The same, to V., Bishop-Elect of Chartres.

Concerning causes that are committed to be decided within a certain term, we will your knowledge to hold this: unless the day fixed by the Apostolic authority is extended by the common consent of the parties, when it has passed, the mandate expires.

§ 1. Upon those also who have neglected to come at your citation for causes committed to you, or to obey your judgment concerning them, if the business is such that a certain penalty for it is expressed in the canons, you shall inflict that penalty; otherwise, you shall take care to punish them according to your judgment in accordance with the quality of the offense and of the cause.

Textual note: A stray *ñ* separating the two parts of the source headnote was removed as a transcription artifact.

Chapter V

Latin source headnote: Through a simple commission of a cause, a delegate can cite, punish the contumacious, and do the remaining things that pertain to the cause.

The same, to the Archbishop of Sens.

Furthermore, concerning the matter on which you wished to consult us—whether a delegated, non-ordinary judge without letters of commission is permitted to compel a contumacious person to come, or to condemn him if he does not come—let it become known to you by the authority of the present letters that, after a cause has been delegated to him, even simply, by our authority he can sufficiently compel the parties and also restrain the contumacious with ecclesiastical severity, even if the letters of commission do not contain this or the parties do not possess our mandate that they should appear. For from the fact that the cause is committed to him, he receives full power over all those matters that are known to pertain to the cause itself.

Chapter VI

Latin source headnote: If a cause has been committed to several persons, even simply, each one can subdelegate. This is what it says, and it is alleged daily.

The same, to the Bishop of Winchester.

Although we are entangled by a multiplicity of affairs and occupied with grave and diverse solicitudes, nevertheless, beyond the common duty, the charity and affection of your fraternity, by which we love your person, compels us to respond to your consultations, lest we seem to leave undiscussed the matters that your discretion wished to present to us to be resolved.

Therefore, let it become known to your solicitude that a judge delegated by us can delegate to others, [to one or several], a cause committed to him: either the entire cause to be heard and terminated; or so that they may hear the allegations and reasons and receive the attestations, reserving the sentence to himself; or so that they may do only some one of these things according to the will and good pleasure of the one delegating. Nevertheless, he cannot delegate the same cause to another with appeal set aside, even if it was committed to him with appeal removed.

But if a cause is committed to two persons, even if it is not added that one may proceed in it without the other, nevertheless either of them can commit his functions in this matter either to his co-judge or to another. [But, etc.; cf. c. 3, On Rescripts, I.3.]

Chapter VII

Latin source headnote: A delegate of the Pope executes his own sentence when the one to whom he had committed its execution cannot or will not execute it.

The same, to the Bishop of Norwich.

You signified to us through your letters that sometimes a sentence concerning some cause is rendered in vain by a delegated judge when the ordinary judge is unwilling to commit it to execution at his mandate, or cannot bring it to effect because others resist. Concerning this, however, we respond thus to your consultation: if the ordinary judge at the mandate of a judge delegated by us either will not or, because others resist, cannot bring the sentence given by him to effect, the delegated judge can commit it to execution by our authority committed to him; and if any persons resist him, he can restrain them by ecclesiastical sentence. [If at any time, etc.; cf. the following chapter.]

Chapter VIII

Latin source headnote: If the ordinary knows that one whom a delegate of the Pope orders to be inducted into possession was not canonically instituted, he shall not resist violently, but shall insist with prayers that the delegate defer until the Pope is consulted.

The same.

But if at any time clerics before a delegated judge draw prelates of churches into a cause concerning the churches that they hold, and before the same judge obtain the churches through a settlement or in another manner, in which it is certain that they had no canonical institution whatever, nor even corporal possession, the ordinary judge ought not violently to resist the mandate of the delegated judge, but ought to insist before him that he defer putting them into possession until the truth of the matter becomes known to us.

Chapter IX

Latin source headnote: After a definitive sentence has been committed to execution, the jurisdiction of the delegate expires.

The same, to the Bishop of Brescia.

In the letters that your fraternity directed to us you inserted certain questions concerning which you sought that a solution be furnished to you by us. One of these, indeed, is this: until what time can a delegated judge interpose his functions so that the adjudged matter or settlement is observed? Concerning this we respond thus to your consultation: from the time when the delegated judge personally, or through another if he could, committed the sentence to execution or ordered that it be committed, his authority and jurisdiction ceases, because he has once discharged his office.

Chapter X

Latin source headnote: When the defendant is absent but not through contumacy, a delegate appointed even for a fixed day shall not restore the plaintiff, although the plaintiff wishes to prove possession and ejectment.

The same, to the Abbot of Saint-Aubin.

By the ministry of the service undertaken, we are compelled to respond to the consultations of individuals, so that, if anything of doubt or question arises in anyone's mind, it may be resolved by the Roman Church, which by the Lord's disposition merited to obtain primacy among the others.

It was asked of us whether, if someone asserting that he was despoiled of a church or any possession without judgment and reasonable cause obtained letters from us to judges that possession should be restored to him within a certain time if it were established for the judge that he was so despoiled, possession ought to be restored to him when the one who holds the church or possession that he reclaims had, before any mention was made of the letters themselves, absented himself for the sake of studies, pilgrimage, or another cause of this kind, and cannot exhibit his presence to the judge within the fixed time.

Concerning this we respond thus to your inquiry: he neither can nor ought to have restitution, although he is prepared before the delegated judge to prove his possession and ejectment by suitable

witnesses, unless the one who possesses had absented himself through contumacy. But if the judge extends the term until the return of the one who possesses, his jurisdiction expires, because without the consent of both parties it is not permitted to a judge in any way to extend a term fixed by the one delegating. [Furthermore, etc.; cf. c. 19, On the Right of Patronage, III.38.]

Chapter XI

Latin source headnote: A delegate of the Pope has jurisdiction in the cause committed to him over an ordinary and any greater person.

The same, to the Bishop of Chartres.

Indeed, because you first wished to consult us how a judge delegated by us ought to compel a bishop who is not subject to him to do or give something when, by our mandate, he undertakes to terminate a cause that is pending between the bishop and a cleric or layman, we have decided to respond thus to your question: a judge delegated by us performs our functions, and hence in that cause he is superior to and greater than those whose cause he undertook to terminate.

Therefore, if a bishop or another person who is not of his jurisdiction should be rebellious or contumacious in a cause that we delegate to him, according to the quality or quantity of the deed he will be able to be compelled by the delegated judge with a sentence either of interdict or suspension, in such a way that the judge, proceeding temperately according to the quality of the business, forbids the bishop either entry into the church or the priestly office, or even subjects to interdict that bishop's land which pertains specially to his jurisdiction. [Concerning witnesses, etc.; cf. c. 5, On Compelling Witnesses (2, 14), in Compilation I.]

Chapter XII

Latin source headnote: If the first man obtained the first dignity to become vacant in a church, and a second obtained a certain dignity of that church when it became vacant, and it afterwards becomes vacant, it is owed to the first and not the second. This is what it says, and it is a notable decision.

The same, to the Archbishop of York and the Bishop of Coventry.

On behalf of N., a chaplain, it became known to us that, when he obtained our letters to you, brother of Coventry, that you should assign him the archdeaconry that should first happen to become vacant in your church, R., his adversary, obtained other letters, as is said, to you, brother of York, with no mention of the earlier ones, that, if his maternal uncle wished altogether to relinquish the archdeaconry that he held in the same church, you should cause it to be assigned to him.

Therefore, because, if we had remembered that we had directed our letters for the aforesaid N., as we have said, we would in no way have written for his adversary, and being unwilling that our letters that we sent for the same N. lack effect on this occasion, we command your fraternity by apostolic writings, under precept, that you assign to the aforesaid N. the archdeaconry of that church, if it is vacant, notwithstanding the later letters.

Chapter XIII

Latin source headnote: Where a contrary will of the Pope does not appear, a delegate ought to preserve the form of law and admit reasonable exceptions. Johannes Andreae.

The same, to the Archbishop of York.

On your part it has been asked of us whether, when we commit some cause under a certain form, the delegated judges ought so to follow the form committed to them that they do not admit reasonable exceptions. Upon this we answer your question in this manner: even if at times it is expedient for a delegated judge to preserve the form prescribed to him, he nevertheless ought to admit reasonable exceptions and proceed in the cause according to the equity of law, unless it is expressed in our letters that no exceptions ought to be admitted. We believe that neither we nor our predecessors have ever expressed this.

Chapter XIV

Latin source headnote: A delegation made to a dignity, without a proper name being expressed, passes to the successor.

The same, to the Abbot and Convent of Marmoutier.

Since the Abbot of Leicester, who, after first receiving our mandate, fixed a day for the parties to act, having first taken the counsel of prudent men, joined to himself in cognizance of the cause the newly substituted Abbot of Winchester in place of the judge who had previously died, after our mandate had been presented to him, because the commission of the letters emanated from us under the express names of places and not of persons, we therefore hold their sentence ratified and firm, insofar as it is just.

Chapter XV

Latin source headnote: If the Pope delegates a question concerning the right of presentation, appeal having been removed, and under this form, that the delegate should ordain the church upon the presentation of the one to whom he shall see that it pertains, through this he does not have power to institute, but to pronounce judgment, and the one to whom it pertains shall institute; and, if his right is impaired, he lawfully appeals.

The same.

Concerning what, moreover, you wished to add, namely, if, after a question has arisen among certain persons concerning the presentation of a priest, it should happen that the cause is delegated to someone under this form—that, if it should be established that the right in question pertains to either party, upon that party's presentation he should ordain the church with a suitable person, appeal having been removed—whether it is lawful for the delegated judge, without the diocesan bishop's knowledge, or when the archdeacon or archpriest protests, to put the cleric presented to him into possession of the church, especially if the person presented was unknown or less suitable; and whether, if the archpriest, archdeacon, or bishop to whom institution pertains should appeal, deference is to be given to their appeals: concerning this we wish your discretion to hold that, although we commit to someone for determination, appeal having been removed, the question that is disputed concerning presentation, it is nevertheless not our intention to generate prejudice to the diocesan bishop, archdeacon, or archpriest. Therefore, the one who is to be presented must be presented to him by whom he is to be instituted. And their appeal shall hold if, seeing their right impaired, they should decide to appeal, because the remedy of appeal has been removed not from

them, but from the parties between whom the cause was committed. [But concerning churches, etc., cf. c. 9, On Census, III. 39.]

Chapter XVI

Latin source headnote: If a cause is delegated simply to two persons, the sentence of one does not hold.

The same.

We remember having committed to our venerable brothers, the Bishops of Fréjus and Gap, the matrimonial cause that is known to be conducted between the woman I. and Blanchacius. When they had indeed convened together and, as we have learned, had ordered that woman to be restored to the man, the man so afflicted the woman with torments and lashes that, unwilling and coerced, she confessed a relationship of kinship between herself and her husband. And so it happened that at the judgment of one of them he put away the same woman, who is said to have borne him five sons and to have remained with him for fourteen years without any question.

Hence, because matrimony is proved to be so great a sacrament in the Church of God that it ought not to be dissolved without a reasonable and evident cause, especially since it was instituted not by man but by God, we command your discretion by apostolic writings that you diligently and subtly inquire into the truth of this matter; and, if you find that the aforesaid B. separated the said I. from himself solely at the judgment of one of the aforesaid bishops, because, when a cause is committed to two persons, the sentence of one does not hold, after prior admonition you are to compel him, appeal having been removed, to receive the same woman kindly as his wife and to treat her with marital affection. But if perchance he should disdain to do this, appeal ceasing, you are to bind him and the woman brought in over her with the bond of excommunication. If, nevertheless, any persons should appear who, after she has been received back by him, wish and are lawfully able to challenge their marriage, after the parties have been summoned before you, you are to hear the cause and terminate it with a canonical end, appeal having been removed, employing that maturity and circumspection which it is fitting to employ in the whole business.

Textual note: The Latin Library transcription's *sit institutam* has been corrected to Friedberg's printed *sit institutum*; the neuter participle agrees with *matrimonium*.

Chapter XVII

Latin source headnote: A delegate who is the lord of the impetrant can be recused.

The same, to the Bishops of Oxford and Winchester and the Abbot of Hereford.

We committed under a certain form to you, brother bishops, and to our venerable brother the Bishop of London, for termination, the cause that is disputed between the noblemen F. and R. of Ardenna, formerly the son of Agatha, concerning the birth-status of Agatha. But because the same F. of Ardenna held the aforesaid Bishop of London entirely suspect, for the reason that he is the lord of the aforesaid R., we decided that he should be removed and that you, son abbot, should be substituted in his place. Therefore, by apostolic writings we command and enjoin you that you subtly inquire into the truth of the matter concerning the birth-status of the aforesaid A., and if, etc. [Cf. c. 4, Who Are Legitimate Children, IV. 17; c. 3, On Fraud and Contumacy, II. 14.]

Textual note: Both the web transcription and Friedberg's printed text read *ispsum*, an evident typographical error for *ipsum*; the translation renders the intended pronoun.

Chapter XVIII

Latin source headnote: From the subdelegate of a papal delegate who did not subdelegate the whole matter, appeal ought to be made not to the Pope but to the delegate himself.

The same.

When, by consulting us, you seek to be taught whether it pertains to you to confirm the sentence that judges delegated by us have rendered in causes in your province, although nothing concerning the causes [themselves] was conducted in your presence, we answer your consultation by the present letters that you are not bound to confirm that sentence unless you wish to do so. But know that this is incumbent upon you by duty of office: if the sentence cannot be put into execution at the mandate of those judges, you are to furnish them aid and favor; and you will be able to confirm it if you know that it was rendered reasonably.

Likewise, if, concerning a cause that is committed to you by our delegation, an appeal has been interposed by one or more ecclesiastical persons to whom, so that [meanwhile] you may spare the parties' labors and expenses, you commit cognizance of that cause and examination of the witnesses while reserving the sentence to yourself, you are not bound, in view of an appeal of this kind, to leave the cause itself undetermined.

Chapter XIX

Latin source headnote: The jurisdiction of a delegate before whom the issue had been joined does not expire upon the death of the delegator.

Lucius III, to the Archbishop of Canterbury and his Suffragans.

It has been reported [on your part that, although the remedy of appeal had been removed in commissions made by Alexander III, our predecessor of holy memory, nevertheless one of the parties alleges that the mandate expired upon the death of the mandator, whether or not the issue had been joined, and therefore, all business having been postponed, you await an apostolic mandate in suspense.] We therefore answer your consultation [by the authority of these presents] that, if the issue had been joined before the death of our predecessor, the mandate in no way expired upon the death of the mandator. But if he died before the joinder of issue, the judges whom he had delegated are not to proceed in that case by virtue of a delegation of this kind. Therefore, appeal ceasing, it will be possible to proceed in that case in which, before the mandator's death, the issue had been joined through statement and answer. But where the mandator's death preceded joinder of issue, the proceeding is to stop altogether, whether or not an obstacle of appeal had been interposed. Given at Verona, on the sixth day before the Kalends of July.

Chapter XX

Latin source headnote: If the delegate cited the party before the death of the delegator, his jurisdiction has been perpetuated. And one who pursues the suit before the judge from whom he appealed renounces the appeal.

Urban III.

We consider it pleasing and acceptable that you expend due care upon the business committed to your discretion and, in matters that cause doubt, in keeping with the gravity of your office, seek the judgment of the Apostolic See. Indeed, your devotion has consulted us whether, when an edict of citation was issued before the death of the delegator but the issue was joined after the death of the [delegator], the delegated judge ought nevertheless to proceed in the cause; and whether one is understood to have renounced an appeal who, after it had been interposed, sought adjournments for producing witnesses and then, renouncing production and pleading, sought to have the attestations solemnly published, just as you assert that all this happened under your examination around the death of Pope Lucius, our predecessor of good memory, who had delegated you as judges.

We answer your inquiry in this manner: because in the former case, once the citation had been made, the business was, as it were, begun, and especially if the delegate is not certain of the death of the delegator, there can and ought to be proceeding in the cause, and whatever, with justice as guide, shall have been definitively determined through judicial procedure shall hold. But in the second case there appears to have been a withdrawal from the appeal, if it should be established that the one who appealed proceeded in accordance with the matters set forth above.

Chapter XXI

Latin source headnote: If a cause is committed to three delegates with the clause, "but if not all, etc.," before the incapacity of the third becomes apparent, two cannot proceed, and, if they proceed, they do nothing. This is what it says, as far as § We add. § 1. The clause, "if not all of you are able," includes will under incapacity with respect to perfecting the jurisdiction of the co-judges. The same applies to two appointed with the clause, "but if both." This is what it says, as far as § The sixth. § 2. If the defendant before the delegate objects against the plaintiff that he is excommunicated, but does not prove it within the due time, the plaintiff is heard. But if he proves it, the delegate shall absolve the plaintiff if he was excommunicated on account of the cause committed to him. If on account of another cause, he shall remit him to his excommunicator. If the latter does not wish to absolve him, the Pope's delegate shall absolve him, unless it is among the cases reserved to the Pope. This is what it says. § 3. One absolved by the delegate concerning the cause for which he had been excommunicated shall appear, or answer concerning that cause, before the excommunicator, unless it has been delegated to another; and, if the excommunicator has maliciously delayed, the delegate who absolved him shall take cognizance. This is what it says.

Celestine III.

Your prudence: (*And below:* [cf. c. sole, On the Amendment of the Pleading, II. 4.]) In the fifth place, moreover, you entreat to be informed whether, when a cause is committed to three or more persons in such a way that, if all are unable to take part, two shall nevertheless execute it, if the defendant has been summoned by only two, he is necessarily bound to come; and, if he has been cited by only two or by more, [and] has appeared before two, while the third or another beyond him neither comes in person nor excuses himself by letter, as is customarily done, whether the two present can proceed in the cause, define it, and terminate it by the reckoning of a sentence.

In this case we answer in this manner: when any one of the delegated judges has not shown through a reliable messenger or an excuse sent in writing that he is unable to take part, or it cannot otherwise

be canonically established concerning the same, the remaining judges ought not to proceed to cognizance of the cause. But if they proceed, they shall be reckoned to have done nothing. This indeed was the ancient provision of the Apostolic See, that it would more willingly delegate recognitions [and decisions] of causes of this kind to two persons than to one, and to three than to two, since, as the sacred canons attest, a judgment that is confirmed by the opinions of several persons is complete. For anyone who should presume to judge outside the form of the rescript received would be proved to exceed the bounds of the mandate.

§ 1. We add also that, where it has been set down in the commission that, if all are unable to take part, two shall nevertheless execute it, even if one of them, although he is able, is unwilling to take part, the two are nevertheless to proceed in the cause, although that third person is to be most gravely reproved because he evades or disdains to execute the apostolic mandate. We say that precisely the same is to be observed also in a cause that is committed to two persons with this added: that, if both are unable to take part, the one shall nevertheless execute it.

§ 2. The sixth question proposed to us on your part contained this: when a cause is committed to certain judges, and it sometimes happens that the defendant objects against the plaintiff that he cannot stand in judgment, inasmuch as he is bound by the bond of excommunication, if the defendant is unwilling, or is unable, immediately to prove him excommunicated, whether the plaintiff ought nevertheless to be heard until the truth of the matter that is objected has been disclosed and unraveled. We remove this doubt in this manner: if the one who objects to something of this kind does not immediately, or within a competent term, prove lawfully what he contends, the plaintiff ought to be permitted to be heard without any impediment. But if, either from the plaintiff's confession or in any other manner, it should be lawfully established that the plaintiff is bound by the bond of excommunication, he can lawfully be absolved by the delegated judges according to the form of the Church, [provided] that, if he was excommunicated by an ordinary or delegated judge on account of another just and evident cause, he ought to be remitted to the excommunicator to be absolved. But if the latter has employed malice, the delegated judges are freely to execute this according to ecclesiastical rite, provided that the kind of excommunication is not of that [offense] whose absolution is reserved solely to the Apostolic See; for it is established law that, to delegated judges to whom the principal matter is committed, the accessory matter is also committed.

§ 3. But if he has been absolved by these judges—after, namely, furnishing an oath that he will stand by the mandate of the Church—you ask again [to be taught] whether he is bound to answer concerning the same cause for which he had been excommunicated before the same delegated judges or before the ordinary by whom he had been excommunicated, and by whose judgment or mandate he ought to stand. In this case we answer thus: he ought to stand before the excommunicators themselves concerning that cause for which he had been excommunicated and to observe their mandate, unless that business has been specially delegated to other judges by the Apostolic See. But if the excommunicators have maliciously delayed, then the delegates shall exercise in the accessory matter the same jurisdiction as in the principal matter. [Given at the Lateran, on the fifteenth day before the Kalends of July, in the third year of our pontificate, 1193.]

Textual note: Three stray ñ characters in the Latin Library transcription, occurring between the divisions of the headnote, have been removed; they are not part of the Latin text. The transcription's *ordinano* has also been corrected to Friedberg's printed *ordinario*.

Chapter XXII

Latin source headnote: If a cause is simply delegated to three persons, two cannot proceed without the subdelegation of the third. But if they have done so, appeal can be taken from them. The same applies if they were appointed with the clause, "but if not all." For the proceeding of two without the third having been consulted is not valid. This is what it says, encompassing both understandings.

Innocent III, to the Archbishop of Reggio and the Bishop of Cefalù.

When the cause that is disputed between our venerable brothers, the Archbishops of Monreale and Rossano, concerning certain tithes had been committed by us to our venerable brothers, the Archbishops of Palermo and Capua, and to you, brother of Reggio, to be terminated with a due end, the aforesaid Archbishop of Monreale, as we learned from his letters, came in response to the first citation of the aforesaid Archbishops of Palermo and Capua. Established in their presence, he proposed by way of exception that, for two reasons, he ought not to stand before their judgment: first, namely, because the cause itself had been delegated to three judges, and he had been summoned to judgment by only those two, while you, brother of Reggio, although present, were unconsulted and unaware and had not committed your authority to them concerning this; and also because, before their citation and knowledge of the letters, he had sent his messenger to the Apostolic See for the same cause, in which matter he affirmed that a decretal of Pope Alexander III, our predecessor of happy memory, supported him more plainly. But the same archbishops, unwilling to admit his exceptions, rendered an interlocutory sentence against him that he should answer; on account of this, the same archbishop, feeling himself aggrieved, appealed to the Apostolic See.

We therefore commit the inquiry into the aforesaid matters and their canonical decision to the examination of your discretion, and by apostolic writings command your fraternity that, after those who ought to be summoned have been summoned before you and the truth concerning the foregoing has been more diligently inquired into, if it should be established to you that the aforesaid archbishops in no way admitted the aforesaid exceptions, notwithstanding what was done by them, you are to cause the tithes themselves—of which the aforesaid Archbishop of Monreale asserts that he was despoiled after his messenger had approached the Apostolic See on account of this, especially since he asserts that the same tithes were confirmed by the Apostolic See both to himself and to his church—to be restored with the fruits received from them, every obstacle of contradiction and appeal having been removed, whether it was done through lay power or even through the same judges; and afterwards you are to hear whatever question remains, insofar as you are able by law, and, appeal having been removed, decide it with a due end. [Given at the Lateran, on the Kalends of November, 1198.]

Chapter XXIII

Latin source headnote: If two persons are delegated with the clause, "but if both, etc.," when one has been recused the other can proceed alone, nor does the proceeding hold if he proceeds with the person recused.

The same, to the Convent of Conches.

When a question concerning the abbacy of your monastery had been conducted for a rather long time between you and S., formerly your abbot, [the parties at length approaching our presence, we

appointed our beloved son H., cardinal-deacon of Saint Eustachius, as auditor. In his presence it was alleged on behalf of S. in this manner: when our beloved son I., cardinal-priest of the title of Saint Pudentiana and at that time legate of the Apostolic See, had entered Normandy and had held a diligent inquiry with the abbot and brothers concerning the condition of that abbey, he found nothing there worthy of reproof, as appears evidently from the letters of Pope C., our predecessor of good memory, in which that cardinal's declaration is inserted.

But after he later departed from the monastery, his letters were fraudulently obtained to our beloved sons, the Abbot of Troarn and the Prior of Saint Barbara, concerning an inquiry to be made into the abbot and the whole monastery, with no power given to the investigators to make any determination against the abbot, as is evidently gathered from the testimony of the same cardinal. Therefore, when the aforesaid investigators approached the aforementioned monastery and wished to exceed the bounds of the mandate in conducting the inquiry without preserving the order of law, the same abbot appealed to the Apostolic See before the inquiry took effect. And although he had begun his journey to come to the Roman Church, the said investigators, deferring neither to the appeal reasonably interposed nor to his absence or any excuses, promulgated against him, contrary to the order of law, a sentence of removal, although the power of pronouncing judgment had not been granted to them, as is plainly declared from the letters of many prelates.

Therefore, when the aforementioned abbot approached the presence of our said predecessor and made him more certain concerning his irregular removal, our predecessor, having annulled all things that had been ordained contrary to the order of law by the said investigators, restored the same abbot by his sentence, committing only its execution to our venerable brother the bishop and our beloved sons L. and H., the Archdeacons of Évreux. But after a day had been assigned to the parties by the bishop alone and both parties came at the term, although the abbot expected that restoration would be made to him according to the tenor of the apostolic mandate, he was unable to obtain it. On the contrary, the bishop labored by prayers, threats, and terrors to induce him to submit to that bishop as arbitrator—not concerning the making of restitution, which was the principal business, but only concerning the deferral of its execution. And because the adverse party had approached that place with arms and a multitude of armed men, it happened that, as stated above, he submitted to the said bishop as arbitrator, faith being pledged in his hand and the letters of restitution being deposited with him, not to be delivered to the adverse party but to be diligently preserved and returned to him at an opportune time. But the bishop himself, not fearing to act contrary to what he had promised, returned the aforesaid letters to the abbot's adversaries.

And thus, with the arbitration violated alike on the part of the bishop himself and of the adversaries, monks approaching the presence of Melior of good memory, cardinal-priest of the title of Saints John and Paul and at that time legate of the Apostolic See, obtained letters of commission to I., formerly Dean of Rouen, concerning the grievance of the arbitration. At his first citation a monk sent by the said abbot was captured by the adversaries and consigned to iron chains; but when the same abbot came at the second citation, he was compelled by pressure to submit to the dean as arbitrator, not concerning the abbacy, regarding which no question was disputed before him, but for the diminution of certain revenues in grain. But because the other party did not preserve its pledged faith concerning observance of the arbitration, as had been agreed, the said S. was again compelled to labor to the Apostolic See, where at length, concerning both the principal question and even the incidental

question,] our letters regarding it had been directed to the Bishop of Lisieux and the Abbot of Bec, [that they should strive to elicit the truth concerning the matters that had been intimated to us and should determine what they should see was reasonably to be determined according to God, the order of law being observed in all respects, in such a way that either one should fulfill the apostolic mandate without the other if the other was unwilling or even unable to be present. Mention was made in those letters concerning the pledge of faith violently extorted, as the same S. asserted, and that it concerned not abjuring the monastery but only deferring restitution, as has been said, lest, if these matters were omitted, the commission should appear to have been obtained with the truth suppressed.

But when the parties were established before the delegated judges, the party of the man whom he called an intruder said that the aforesaid bishop was suspect to him for two reasons: both because he had a certain cause against the aforementioned monastery concerning a church, and also because he had not admitted that man, upon his return from the Roman Curia, to the kiss of peace. Hence he was unwilling to stand to law either before them or before either one of them, although he said nothing against the abbot; instead, appealing frivolously, he contumaciously absented himself. But the said executors, by no means deferring to the appeal, which was no appeal at all, having taken the counsel of many prudent men, put into execution the sentence rendered by our said predecessor, restoring the abbacy to the aforesaid S. and imposing perpetual silence upon the aforesaid intruder.

And when the diocesan bishop, although frequently required at their command on the part of the Apostolic See, refused to induct S. himself into corporal possession, they committed its execution to certain deacons. These not only were not admitted, but, afflicted with blows by the monks and their supporters, were consigned to confinement in prison. On this account, a sentence of excommunication was promulgated by the delegates against the intruder, the monks, and their supporters, according to the tenor of the apostolic mandate. But the intruder and monks did not on this account cease to celebrate divine offices; after that intruder had died, they even presumed to elect another excommunicated man, as is evidently perceived from the delegates' letters.

And when not even thus could they be led back to the fruit of a better life, the oft-mentioned S. began a journey to come to the Apostolic See. But messengers of the monks, anticipating him, fraudulently obtained letters concerning the conferral of the gift of benediction upon the one whom they had elected, which they sent to their region more hastily than they ought. The said S. therefore sought that those monks—who presumed to cut out the tongue and tear out the eyes of one of his predecessors, attacked another while he sat at table with swords and clubs, and left another alone in the church prepared to celebrate Mass—be punished with fitting chastisement; that possession of the abbacy be fully restored to him, as had been determined by our said predecessor and afterwards ordained by the delegated judges; and that the intruder who had been assumed after a sentence of excommunication had been rendered against him be condemned by perpetual silence.

But, on the contrary, it was proposed on your behalf in this manner: when the aforesaid Cardinal I. was exercising the office of legate in those regions and committed to the aforesaid Abbot of Troarn and Prior of Saint Barbara for termination the cause itself concerning both the waste committed by S. himself and his incontinence, after ascertaining the truth and observing the order of law in every respect, they rendered against him a sentence of deposition, which was afterwards confirmed by our said predecessor. But S. himself intimated to the same predecessor of ours that he had been unjustly

despoiled of that abbacy, the aforesaid cardinal likewise asserting that it had not been his intention that the delegated judges should proceed to the abbot's deposition, although this too had been committed to them, as is found in their letters. Hence, our oft-mentioned predecessor did not restore him in the absence of the other party, but ordered that he be restored by the aforementioned bishop and archdeacons, because it had been concealed from them that the aforesaid cardinal had also granted to the said abbot and prior the power of deposing him.

Therefore, when the parties convened on the day and at the place assigned to them by the delegates of the Apostolic See, the said S., with faith pledged, affirmed in the bishop's hand that he would stand by his arbitration concerning that cause. The bishop diligently admonished the parties to direct themselves toward the things that belong to peace, and such a settlement was made between them that the said S. would withdraw from the abbacy in perpetuity. The delegated judges held that withdrawal ratified, and the same S., as is contained in the delegates' letters, affirmed by oath that he would firmly observe it. And although he had obtained duplicate letters of entirely the same content concerning his restoration, after the settlement was made—which our oft-mentioned predecessor later confirmed—he surrendered one and fraudulently retained the other.

But, after the passage of time, when the settlement had been observed by him for a while, he caused the same cause to be committed, through the aforementioned Cardinal Melior, to the former Dean of Rouen. In the presence of the dean and of our venerable brother the Archbishop of Rouen, the first settlement was renewed, and there the aforesaid S. again abjured the abbacy and corporally furnished an oath that he would henceforth observe the settlement itself, as is contained in the letters of the Archbishop of Rouen himself and could be proved by many witnesses. These things were done before the Dean of Rouen chiefly for this reason: the priory that S. himself was to obtain was situated in the diocese of Rouen. When he had held it for two years and, by living dishonorably, had consumed almost everything, he violently extended his grasp to other goods of the monastery.

And finally, approaching our presence and expressing certain of the foregoing matters but keeping others silent, he carried back our letters to the aforesaid Bishop of Lisieux and the Abbot of Val-Richer, that they should diligently inquire into the truth of all matters and determine what justice demanded. But when they had cited the parties before them, although the bishop was suspect to the other party for the aforementioned reasons and because he answered Abbot R. that, if he could, he would harm him, and although he had been recused by that party and the latter wished to prove this before the co-judge who was not suspect or before arbiters chosen by the parties, the said Abbot of Val-Richer was unwilling to admit this. An appeal was afterwards taken from those two before entry into the cause; they nevertheless decreed by sentence that S. himself was to be restored, imposing perpetual silence upon his adversary concerning the abbacy.

Therefore, when the aforesaid cardinal had prudently and faithfully reported the foregoing and certain other matters to us and our brothers, because it was established to us through the letters of the aforesaid judges, the bishop and Archdeacon of Évreux, to whom the cause concerning the restoration of S. himself had been committed by our said predecessor, that with the assent of both parties a settlement had been made under this tenor: that the Priory of Saint Stephen, with all its appurtenances, and certain other things were granted to him to possess for as long as he lived; that he withdrew from the suit by his spontaneous will; and that he surrendered his instruments into the hands of those judges after breaking the seal that he had used; and because we evidently perceive

from the letters of the aforementioned Archbishop of Rouen that he abjured the aforementioned abbacy, we, being unwilling that through us, who punish perjuries, a way be opened to perjuries, since by receiving a settlement of this kind he also renounced the abbacy, with the counsel of our brothers communicated, absolve you and your monastery from the legal attack of S. himself, imposing perpetual silence upon him concerning that question. What was done by the last delegates does not stand in the way, since from these matters it appears evidently that, to say nothing of the others, if the foregoing matters were established to them, they proceeded less than lawfully by restoring one who had no right to seek anything back. And]

Although the abbot alone, before appeal was taken from him, could have proceeded according to the form of our letters, nevertheless, by the fact that he held an interlocutory conference with the bishop himself, he consequently confessed that the appeal earlier interposed from the same bishop had not held and that, by law, he could not fulfill the apostolic mandate without him when he was able but unwilling to take part in the business. Nor was it his intention to decide anything without his co-judge; and with one who had already ceased to be a judge he was unable lawfully to determine anything concerning the aforesaid business. Thus, their will and power were mutually opposed: since he was unwilling to do what he was able to do, and was unable to fulfill what he wished to do, what had been done by the two could not by law obtain effect. Therefore let no one, etc. Given at the Lateran, on the Ides of April. [1199.]

Textual note: Two evident transcription errors in the Latin Library text have been corrected against Friedberg's printed page: *frustratonrie … absentavi* to *frustratorie … absentavit*, and *mundaverunt* to *mandaverunt*. The ungrammatical *episcopos*—which also appears in Friedberg's printed text—has been corrected to *episcopus* as required by the singular verb *esset*. The edition's reading *Lesionensem* has been rendered "of Lisieux"; Friedberg's apparatus records *Lexoviensem* among the variants, and the same bishop is called *Lexoviensis* later in the chapter.

Chapter XXIV

Latin source headnote: If the delegate's jurisdiction expires at the peremptory term that he assigned to the parties, after a suitable hour of the peremptory day the judge shall not wait for the contumacious party. If it does not expire, he can wait until the next day and cite again, if he wishes.

The same, to the Archbishop of Toledo.

Your fraternity has consulted us whether, when you cite the parties peremptorily for the reception of witnesses, publication of their depositions, or rendition of a sentence, and one of them contumaciously absents itself on the appointed day, you are to proceed in the business at least around the final part of the day or instead wait until the following day; and, if you have waited, whether the contumacious party is to be cited again, since there was no proceeding on the day assigned to the parties.

We, however, believe that a distinction must be made whether the jurisdiction endures after the peremptory term or expires at it. If it endures, equity so counseling, you will be able to wait until the next day, nor, once the peremptory term has elapsed, is the contumacious party to be cited, unless the kindness of the judge grants it this favor. But if it expires, unless the parties—especially when they know this—have presented themselves to you at an hour when you can suitably proceed to

execute that for which you lawfully assigned them a peremptory term, from then on you will be able to execute what you intend, lest judicial instance vanish in vain.

But lest ecclesiastical judgment be exercised in darkness, because according to the testimony of the Truth, "he who does evil hates the light," although, according to custom and lawful constitutions in the Roman manner, the day begins from the middle of the night and ends in the middle of the following night, whence legal authority has decreed that what is done in two half-nights is to be held just as if it were done in any part of the daylight, we nevertheless understand that hour for proceeding to be suitable from which you can complete before the darkness of night what is incumbent upon you. Moreover, in assigning a peremptory term, a discreet judge ought not so to constrict his jurisdiction unless necessity requires it.

Chapter XXV

Latin source headnote: For a new cause a delegate is removed, even after joinder of issue, and another is substituted.

The same, to the Abbot of Bordellia and the Prior of the Holy Sepulcher.

By the intimation of our beloved son R., rector of the church of Saint Saldatus, it has reached our hearing that, when he had formerly obtained from us that the cause disputed concerning parochial right between himself and T., rector of the chapel of Saint John of Glovernia in the diocese of Worcester, be delegated to our venerable brother the Bishop of Worcester and his co-judges, afterwards, although there had been proceeding in the same question, in the course of time before the reckoning of a definitive sentence was reached, the same bishop admitted the said R. among his familiars. Without that bishop, according to what was commanded in our letters, the other co-judges were unable to proceed in the cause; and one of those co-judges is an official of the aforesaid bishop, on account of which he could be held suspect by the adverse party.

Hence, since for a cause of this kind both the bishop and the aforesaid official—inasmuch as the same R. had sought them as judges and later became their familiar—could deservedly be recused by the adverse party, R. sought that decision of the cause itself be committed to your discretion. Therefore, by apostolic writings we command your discretion that, if it is so, unless after he became the bishop's familiar he consented to litigate before him, you are to proceed in that cause according to the contents of the former letters, reason leading the way and the obstacle of appeal having been removed; otherwise, the parties are to return to the examination of the former judges. [But if not all, etc. Given on the sixth day before the Kalends of February, 1206.]

Chapter XXVI

Latin source headnote: A papal delegate can execute his sentence for as much as a full year. This is what it says, and it is an exceptional case.

The same, to the Prior of Saint Fridianus.

To one asking what is meant by ecclesiastical censure—(*And below:* [cf. c. 20, On the Signification of Words, V. 40.])—if a delegate appointed by us excommunicates one who disdains to obey a matter adjudged, although it appears to some that he has discharged his office, so that he has no further proceeding by virtue of the jurisdiction delegated to him, while others say that his jurisdiction

endures until the sentence is obeyed, so that meanwhile he can absolve one who is willing to obey: we, nevertheless, walking along the path of equity, establish by authority of these presents that a delegate appointed by us can exercise the jurisdiction committed to him for executing the sentence not only for the four-month period that is conceded by law to a defendant for paying a debt, but for as much as a full year, just as is observed in the case of one who is found contumacious before joinder of issue.

Chapter XXVII

Latin source headnote: A papal delegate can subdelegate the beginning, middle, and end of a cause jointly and separately. This is what it says, as far as § But. § 1. Appeal can be taken from a subdelegate having jurisdiction; it is otherwise if he lacks jurisdiction, unless he exceeds the manner prescribed. For then he can be recused, unless he was appointed with the parties' consent. The Abbot. § 2. From a subdelegate not appointed for the whole matter, appeal is taken to the subdelegator, but not to the original delegator; it is otherwise if he was appointed for the whole. This is what it says, as far as § But him. § 3. An auditor appointed without the parties' consent can be recused as suspect, but not without cause. The Abbot. § 4. If one of two delegates of the prince, with the clause "appeal having been removed," subdelegates to the other who accepts, the one accepting cannot subdelegate or proceed with appeal removed, although he could do so before acceptance. And, if appeal is to be taken from him, it shall be taken to the Pope, even if he was subdelegated not for the whole matter. This is what it says according to the truer understanding. § 5. If a papal delegate subdelegates not for the whole matter, a party cannot appeal from the subdelegate on the ground that he was appointed without the party's consent; he can nevertheless be recused by showing a just cause before the delegate, and then the delegate shall decide. From the delegate, even if he should refuse to admit the recusal, appeal is taken to the Pope. This is what it says.

The same, to the Archbishop of Canterbury.

Concerning the articles of the questions about which you wished to consult us, we answer your fraternity in this manner: by our constitution no derogation whatever is made from the consultation of Pope Alexander III, our predecessor of good memory; rather, the latter is explained by the former, or indeed in the former those things that had been omitted in the latter are more truly supplied. For he answered that, if, concerning a cause that is committed to someone by apostolic delegation, an appeal has been interposed from one or more ecclesiastical persons to whom the delegate, so that he may spare the parties' labors and expenses, commits cognizance of that cause and examination of the witnesses while reserving the sentence to himself, he is not bound in view of an appeal of this kind to leave the cause undefined.

We, however, establish that, although one to whom a cause is committed with appeal removed cannot delegate it to others without the obstacle of appeal, nevertheless, if a delegate appointed by us or any judge should appoint someone not so much as a cognizor as an executor for some certain article, appeal is not permitted from him unless he exceeds the manner prescribed, provided that he is appointed or received with the parties' consent. But if a delegate appointed by us should decide to commit to him either the beginning of the suit or the end of the cause, to say nothing of the whole business, appeal may lawfully be taken from him as from a judge, since issue ought both to be joined before a judge and a cause to be decided by a judge.

Therefore, it was our intention—as can also be plainly perceived from the tenor of the aforesaid constitution—that, so that judicial authority may be exercised more freely, a delegate appointed by us may lawfully delegate to another the beginning, end, and middle of the cause committed to him, not only jointly but also separately. It does not stand in the way that it is said that a judge ought to take cognizance personally at the beginning, middle, and end, since, before he renders sentence, he ought diligently to investigate all things that were done in the judgment.

§ 1. But when he commits the whole cause, or its beginning or end, to someone, appeal can lawfully be taken from that person as from a judge. But when he commits only the middle to someone, appeal cannot be taken from that person as from an auditor, unless he exceeds the bounds of the mandate or is deservedly suspect. Hence, lest he be capable of recusal, we providently establish that he be appointed or received with the parties' consent.

§ 2. Moreover, when a delegate appointed by us transfers his entire jurisdiction to another, if there is to be an appeal, it will have to be taken not to him but to us. But when he reserves some of the jurisdiction to himself, if the cause was committed to him with appeal removed, appeal can by law be taken not to us but to him. Hence, if perchance appeal were taken from one to whom the middle of a cause is committed—whether he is called a cognizor or executor or, what is better, an auditor—on the ground that he either exceeds the bounds of the mandate or is deservedly suspect, nevertheless the delegate appointed by us will still be able, according to the aforesaid consultation, to decide the cause, so that the parties' labors and expenses may be spared.

§ 3. But neither party will be able to recuse the one whom a delegate appointed by us has appointed as auditor unless it shows before him a just cause for recusal.

§ 4. But if two persons have been delegated by the prince and one commits his authority to the other, the latter cannot and ought not to proceed with appeal removed or delegate the cause to another, although it is expressly contained in the commission made to the two that, with appeal removed, either can proceed without the other if both cannot take part together; for what he can do solely by the jurisdiction delegated to him by the prince, he cannot do with jurisdiction committed to him by a co-delegate. Hence, if appeal has been taken from him, although it has appeared to some that appeal can be taken also to the co-delegate, it nevertheless appears to us that appeal is to be taken only to the original delegator, for the reason assigned above.

§ 5. Therefore, the appeal of the one concerning whom your fraternity wrote to us—if, on the occasion of our constitution, he appealed to our hearing on the ground that a delegate appointed by us, reserving the definitive sentence to himself, committed the hearing of the cause to certain persons who were neither appointed nor received with the parties' consent—ought not to have impeded the auditors from proceeding unless he showed a just cause for recusing them, or was prepared to show it before the delegated judge. Even if they had been deservedly recused as suspect, the delegate appointed by us could nevertheless have judicially dispatched the cause itself, with the subterfuge of appeal removed. But if the delegate was unwilling to admit a just cause for recusal and compelled him to litigate before suspect persons, he could lawfully appeal from such a grievance to our hearing, and whatever was presumed to be done after an appeal of this kind ought to be adjudged null and void. [Given at the Lateran, on the sixth day before the Kalends of April, 1204.]

Textual note: Five stray ñ characters separating divisions of the Latin source headnote have been removed as transcription artifacts.

Chapter XXVIII

Latin source headnote: A papal delegate, unless he is maliciously relieving himself, compels a subdelegate to accept the subdelegation; nevertheless, in coercing him, he shall defer to his dignity and person. This is what it says, as far as § Likewise, when the whole. § 1. Just as a papal delegate can commit the whole cause, so he can commit the citation and punish one who disdains to accept it. This is what the Abbot says. § 2. If the Pope knowingly committed an appeal interposed from his delegate appointed with the clause "appeal having been removed," the jurisdiction of the first delegate is meanwhile suspended with respect to execution. This is what it says according to the true understanding. § 3. An ordinary executes a sentence at the mandate of a delegate even if he knows it to be unjust. The Abbot. § 4. A delegate who is impeded from proceeding on the appointed day shall punish the party who procured this and, with respect to that day, shall commit the cause with appeal removed, in odium of the procuring party, unless the parties extend the business. The Sicilian Abbot.

The same, to the Bishop of Ely.

The diligence and solicitude of the pastoral office that you exercise concerning execution of our mandates, and the zeal of your rectitude, invite us—even though we are hindered by the manifold occupations of business—to withdraw ourselves from them for the hour in which, intending to answer, we may attend to your consultations. For the discretion of your fraternity has consulted us whether, if a person delegated by the prince should wish to delegate to another a cause committed to him, he can constrain one unwilling to receive the delegation to receive it. We have decided, with the counsel of our brothers, to answer your consultation in this manner: since jurisdiction to appoint a judge is conceded by law to a person delegated by the prince, provided that he does not maliciously seek to relieve himself, he can compel one who resists, because that jurisdiction would appear to be of no moment if it had no coercion. Nevertheless, the aforesaid delegate ought solicitously to provide that, if necessity requiring, he should decide to delegate the business to superior persons, in applying coercion he defer to their dignity and person.

§ 1. Likewise, you subsequently also asked whether a delegate, when he sees it to be expedient, can enjoin whomever he wishes to cite the parties to his presence, and inflict a penalty upon them for contempt if they disdain to obey. To this we answer your fraternity briefly that, since the delegate can commit the whole business to another, as was expressed above, after prior discretion he can entrust the office of citation to anyone and deservedly punish one who shows contempt. [On your part, etc. (cf. c. 11, On the Office of an Ordinary Judge, I. 31.)] (*And below:*)

§ 2. Moreover, you sought to be taught through the Apostolic See whether, when appeal has been taken from a sentence rendered by authority of our letters in which appeal is prohibited, and letters to other judges have emanated after the appeal, execution of the sentence rendered by the first delegates ought to be delayed at the mandate of the later judges, so that the first judges execute it neither personally nor through others. We answer your inquiry in this manner: when we knowingly commit the cause of appeal to other judges for cognizance, we appear to receive the appeal and revoke the jurisdiction of the former judges, so that execution of the sentence is meanwhile

suspended until the merits of the appeal have been more fully discussed. [Moreover, etc. (cf. c. 14, On Rescripts, I. 3.)] (*And below:*)

§ 3. But because it often happens that execution of a sentence is entrusted to the ordinary, you asked whether, if the ordinary knows it to be unjust, he ought to put it into execution or rather should stop. Therefore, considering that not cognizance but only execution is entrusted to him, we answer your inquiry in this manner: because the ordinary is bound to comply with the delegate, even if he knows that sentence to be unjust, he is nevertheless bound to execute it, unless he can bring it about before the delegate that the latter absolve him from this burden. [To be taught, etc. (cf. c. 11, On the Office of an Ordinary Judge, I. 31.)] (*And below:*)

§ 4. But since it often happens that, on the day that a judge delegated by us has assigned to the parties, through the procurement of one of them so that the business may be prolonged, the judge himself is summoned away by the king or archbishop, we, wishing to meet the maliciousness of the perverse, decree that, if it is established to the delegate that this was procured by the malice of some party, he is to punish that party with fitting chastisement and, lest it carry away any gain from a fraud of this kind, commit the business to be heard for that day to a person suspect to neither party, who is to proceed in it with appeal removed, unless perchance the parties consent that the business be prolonged. [Moreover, etc. (cf. c. 1, On Sacraments Not to Be Repeated, I. 16.) Given at Rome at Saint Peter's, on the fourteenth day before the Kalends of January, 1204.]

Textual note: Four stray ñ characters separating divisions of the Latin source headnote have been removed as transcription artifacts.

Chapter XXIX

Latin source headnote: A subdelegate from a papal delegate who does not have jurisdiction can coerce one who impedes him. This is what it says, encompassing both understandings.

The same, to the Abbot of Saint Hilary and Master G., Canon of Treviso.

We learned from the letters of our venerable brother the Patriarch of Grado that, when our beloved sons, the primicerius of Grado and the pleban of Saint Sophia of Venice—to whom the cause that is known to be conducted between the clerics of Saint Justina and the priest Albert concerning the fact that the same priest asserted himself to be a cleric of that church had been delegated by us—had ordered the same patriarch to declare that the aforementioned clerics were not bound by the bond of anathema, although they had been denounced as lying under a sentence of excommunication by the Archpriest of Padua, by whom a certain rescript had been obtained from us concerning the same business in which, as is asserted, no mention was made of the former letters, because they would not receive the said priest as associate and brother, the patriarch himself was unwilling to obey those judges in this matter, who were exercising our authority. This was especially so since our venerable brother the Bishop of Castello, although required, did not decide to obey them concerning this. The patriarch announced by his letters to the clerics of Santa Maria Formosa the mandate of the aforesaid judges, which our beloved son the Archdeacon of Castello, pleban of the same church, did not permit to be read publicly before the people.

[And when, after a few days had elapsed concerning this, the same archdeacon had been kindly required by the same patriarch at the monastery of Saint Nicholas, suddenly stirred to anger he

assailed the same patriarch with grave verbal injuries in the presence of many.] The patriarch, considering that by such a great excess of injuries the archdeacon had gravely offended not only him but also the church of Grado, or rather us ourselves, subjected both the archdeacon himself and the aforesaid church to ecclesiastical interdict, [especially for this reason: because from ancient custom, as is said, it has been established that letters directed by the Patriarchs of Grado throughout the patriarchate of Grado are admitted without distinction by all.

But, at the insistence of the clerics and parishioners of the aforesaid church, the patriarch relaxed the sentence of interdict with respect to that church, enjoining the same clerics under penalty of excommunication not to presume to participate with the archdeacon in divine offices. But when the aforementioned patriarch, together with the aforesaid bishop, had approached the monastery of the Holy Cross for celebrating the funeral rites of a certain person, and the archdeacon wished to involve himself in the divine offices, the patriarch withdrew to one side to avoid scandal. On account of this the archdeacon began to burden him with grave verbal injuries. Likewise, although the same archdeacon had ceased from divine offices for the space of one day, afterwards, while under interdict, he was not ashamed to celebrate publicly.

In addition, the patriarch laid a grave complaint against the oft-mentioned bishop: although the latter is bound to show obedience and reverence to him and the church of Grado, and although he had commanded him to hold the aforesaid archdeacon as under interdict and the clerics of Saint Mary as excommunicated, and to cause the sentences of excommunication and interdict rendered by him to be inviolably observed throughout the diocese of Castello, the same bishop, to the injury of the patriarch, permitted the archdeacon to minister freely in the church of Castello and commanded the clerics of his diocese under penalty of fealty to announce publicly throughout their churches that the archdeacon and the aforesaid clerics lay under neither a sentence of interdict nor of excommunication. Hence the same patriarch humbly entreated us to take care to punish such great injury and excess, and what had been attempted not only against him but rather against the Apostolic See by both the bishop and the archdeacon, in such a way that material for committing similar things would be cut away from others.

But the said bishop intimated to us by his letters that, when the patriarch declared that the clerics of Saint Justina were not bound by the bond of anathema—whom the same bishop had earlier declared excommunicated by mandate of the Archpriest of Padua, a judge delegated by us, as is asserted—and a contention arose on an occasion of this kind between the patriarch and the archdeacon, the patriarch, from a certain disturbance, placed the archdeacon under interdict. When the latter fled to the benefit of appeal, the patriarch promulgated a sentence of interdict against the oft-mentioned church, and was unwilling to receive the satisfaction offered by the archdeacon concerning this unless the archdeacon affirmed by an interposed oath that he would obey the patriarch's mandates. The same bishop added also that, fearing lest the patriarch break out into anything that would tend to the prejudice or grievance of the bishop himself, his church, or his clerics, he appealed to the Apostolic See, solicitously entreating us to take care to restrain the patriarch from undue molestation of himself and his church and of the clerics and churches of his diocese.]

Therefore, when there had been litigation for some time concerning the foregoing and other matters between the proctors of each party before our beloved son the cardinal-deacon of the title of Saints Cosmas and Damian, whom we had appointed auditor for them, and he had faithfully reported to us

what he heard, because it could not be established to us whether, by the letters said to have been impetrated to the Archpriest of Padua—which were not shown to us—the letters obtained to the aforesaid primicerius and pleban had been revoked, we decided to commit the cause itself to your examination.

By apostolic writings we command that, after the truth concerning the foregoing has been more fully inquired into, unless it should be established to you that the letters said to have been impetrated in the second place to the aforesaid Archpriest of Padua made express mention of the earlier letters obtained to the oft-mentioned primicerius of Grado and pleban of Saint Sophia, so that through the second letters the first letters appear to have been revoked, because it is not doubtful that the first judges had jurisdiction by authority of our letters—which they were afterwards able to entrust to the patriarch with respect to execution of their sentence, from which the same patriarch had also received coercive power, since jurisdiction so entrusted would appear illusory if a subdelegate of this kind had no coercive power—you are to cause the sentence of interdict promulgated by the same patriarch against the Archdeacon of Castello, for the reason that, impeding the execution of that patriarch, he did not permit the latter's letters announcing the mandate of the aforesaid judges to be read publicly, to be inviolably observed, with the obstacle of appeal removed, until sufficient satisfaction has been made to the same patriarch for the injuries inflicted.

But if it should be established that the first letters were lawfully revoked by the second, since it appears that the first judges had no jurisdiction at all and thus it is consequently established that the patriarch himself received no jurisdiction or coercive power from them, you are to declare null and void the aforesaid sentence of interdict rendered by the same patriarch. [Nevertheless, etc. Given at Rome at Saint Peter's, on the eleventh day before the Kalends of January, in the tenth year, 1207.]

Textual note: The Latin Library headnote's *iurisdictionent* has been corrected to *iurisdictionem*; the former is not a Latin form.

Chapter XXX

Latin source headnote: The jurisdiction of a delegate expires upon the death of the mandator while the matter is untouched.

The same, to the Bishop of Poitiers.

Although the abundant multitude of business flowing in from every direction does not cease to impel our mind toward various cares, your fraternity, whom we embrace in the Lord with sincere charity, nevertheless compelled us to set aside for a time the solicitude that, by debt of pastoral office, we were exercising in the execution of other matters, and to make your doubt certain by an apostolic answer.

Therefore, since you decided to ask of us whether, if we delegate some cause to three judges, causing that clause to be placed in our letters, “but if not all of you are able to take part in executing these things, two of you shall nevertheless execute it,” and one, after he has committed his authority to one of the others, has been removed from their midst, while the third is deservedly recused as suspect, the surviving colleague can decide the business in his own name and that of the deceased, we answer your inquiry in this manner: if, while his colleague was alive, he did not begin to use the jurisdiction delegated to him by that colleague, because a mandate of this kind expired upon the

mandator's death while the matter was untouched, he does not alone have the office of judging. But if, before the other's death, he began to use the jurisdiction thus entrusted, he will be able to fulfill both his own authority and that of the other.

Chapter XXXI

Latin source headnote: No one is believed to be a delegate unless he proves the delegation.

The same, to the Bishop of Bayeux.

Since one learned in law—(*And below:* [cf. c. 33, On Election, I. 6.])—moreover, you asked: when it is commanded to you by someone under this form, "By the authority that I exercise, I enjoin you to denounce such a person as lying under a sentence of excommunication," and, while you hesitate concerning the apostolic mandate, no proof of it is furnished to you by anyone, whether you are bound to execute a mandate of this kind. Concerning this we give you the following answer: unless you are certain of the mandate of the Apostolic See, you are not compelled to execute what is commanded. [It happens, etc. Given at the Lateran, on the tenth day before the Kalends of September, in the eleventh year of our pontificate, 1208.]

Chapter XXXII

Latin source headnote: Jurisdiction cannot be extended from one matter to another through a proctor who does not have a mandate concerning the latter matter.

The same, to the Bishops of Paris and Troyes and the Abbot of Saint Geneviève.

When formerly our beloved sons, the Abbot and Convent of Vézelay, showed us by their complaint that the nobleman Peter, Count of Auxerre, was endeavoring to construct a certain pond, mill, and house on their land to their prejudice and grievance, we committed the cause itself to our venerable brother the Bishop of Nevers and our beloved son the Treasurer of Nevers. By their letters we learned that, after issue had been joined concerning the church's petitions, witnesses had been received on both sides, the attestations had been published, and afterwards there had been disputation between the parties concerning the witnesses' statements, the count's party finally proposed before them that they ought not to take cognizance of the damage done to the woods and other things, concerning which the witnesses appeared to depose, since there was no mention of damages in our rescript, [adding that the things concerning which the question was conducted were from the fief of the nobleman the Duke of Burgundy, as the same duke acknowledged in his open letters, and therefore recourse concerning them was to be made to the lord of the fief rather than to the said judges.]

To this it was answered on the other side that [even if not expressly, nevertheless tacit mention of the damage done was contained in our letters, since the word "grievance" was inserted in those letters. On that account they could take cognizance of them at least as accessories or appendages of the principal business. Likewise,] since issue had been solemnly joined concerning all the articles about which the witnesses had deposed, the judges were bound to take cognizance of them and pronounce judgment. [But it also asserted that the count was not to be heard concerning the exception of the fief, which was objected far too late, namely after publication of the witnesses.]

To these things the count's party replied that, even if issue concerning the damages had been joined by his proctor, nevertheless prejudice could not be generated against him from this, since the proctor

had not been appointed for this but only for that cause expressed in the letters of commission, namely concerning the castle, pond, and mill. To this the other party answered that the count could no longer challenge the proctor's act, which he had by no means decided to revoke until after publication of the witnesses. But the judges, having taken the counsel of discreet men concerning the matters proposed on each side, pronounced interlocutorily that cognizance concerning the damage done by the count pertained to them. Hearing this, the count fled to the benefit of appeal. Hence the judges, after summoning him and when he appeared neither personally nor through a suitable respondent, bound him with the bond of excommunication, [but, when he persisted in contumacy, they remitted the same cause, with the attestations faithfully placed under seal, to our presence.

Moreover, when the proctors of both parties were established at the Apostolic See on account of this, the monastery's proctor proposed before us that, since the town of Vetenedum is common to the monasteries of Vézelay and Saint Germain of Auxerre, in such a way that they have terrage, pannage, lodging dues, rent, thirds, lods, sales dues, and retention in it, the aforesaid count—who had been accustomed to receive nothing other than two denarii annually from each peasant in the name of custody or safeguard—now, usurping jurisdiction over it for himself contrary to justice, extorts five solidi from every villager. In a certain place in the same town, after prohibition had been made both to him and to the Hospitallers, who held that place within the monastery's censual tenure, having received it from them by exchange, he was building a castle, pond, and mill to their prejudice and grievance, with grave damage done to woods, stones, and other things. On this account the same proctor sought that the aforesaid buildings, inasmuch as they were constructed after prohibition and denunciation, be demolished; that the aforesaid count be compelled to cease from molestation of the monastery of Vézelay concerning this; and that he furnish the same monastery suitable compensation for the damage done.

But the count's proctor alleged that, because homicides and robberies were very often perpetrated in the aforesaid place of Vetenedum, which was subject to his jurisdiction, wishing to meet so many and such great dangers, he constructed for the security of travelers a certain house on ground that he had received from the Hospitallers by exchange, where he had learned that a fortified house had formerly stood, with a certain pond and mill built there for the use of the guards of that house. But the aforesaid abbot and convent, falsely saying that they were heavily burdened concerning this, impetrated letters to the aforesaid judges; and although the said count offered to them in the judges' presence that, if they proved that they had sustained any damage on account of those buildings, he would repair that damage to them not only singly but doubly, they utterly rejected both this statement and also other forms of peace.

But when there had been proceeding by the judges in the same cause as far as publication of the witnesses, because, after the attestations had been published, it appeared that they had deposed concerning many articles on which issue had not been joined, the count's party alleged that the judges were unable to take cognizance of them. Hence, when the judges pronounced interlocutorily that they could take cognizance of and pronounce judgment concerning the damage done, challenge was made to our hearing.

But we, having heard these and other things that the proctors took care to propose, and having diligently inspected the attestations of both parties, understood that it had been proved for the monastery that, in the aforesaid town, terrage, pannage, lodging dues, rents, thirds, lods, sales dues,

and retentions pertained to the aforesaid monasteries, and that the aforesaid pond and causeway had been constructed partly on the property of the monastery of Vézelay and partly within the censual tenure of it and Saint Germain. Likewise, that a prohibition had been made to the Hospitallers, who paid an annual rent to the monasteries for the aforesaid place, not to transfer that place—namely, the monasteries' censual tenure—to the count, and to the count not to receive that censual tenure.

But it appeared to have been proved for the count's party that jurisdiction over the wood with respect to fortifications is his; that, without injury to anyone, the said count can concede the wood itself for the lodging of the people of that town; and that the count himself has jurisdiction in the town and had been accustomed to receive two denarii from each house of the town for safeguard. Likewise, that the fortification itself was founded in the Hospitallers' meadows, and that whoever has something at rent can, with the rent preserved, concede it to whom he wishes. Again, that a fortified house enclosed by palisades and ditches had formerly existed in the same town.]

But because, before issue had been joined, cognizance concerning the damage done in no way pertained to the said judges, since there was no mention of it in the rescript, nor could jurisdiction be extended to them, since a proctor is understood to be constituted only for the matters that are found expressed in the letters of commission, and because, after the attestations had been published, the count understood that deposition had been made concerning these matters and immediately contradicted it, we pronounced that the same judges had [immediately] pronounced interlocutorily with less than justice, and that the oft-mentioned count, who on this account fled to the benefit of appeal, had not been bound by the sentence of excommunication. [But, etc. Given at the Lateran, in the eleventh year, 1209.]

Chapter XXXIII

Latin source headnote: One who opened the acts of a cause containing the report of delegated judges by violating their seals is not afterwards heard against those acts.

The same, to the Archbishop of Sens.

When it formerly reached our hearing that our beloved sons Master S. and B. had exchanged an archdeaconry and provostship with one another, [(*And below:*) [cf. c. 7, On the Exchange of Things, III. 19.] Therefore, because the truth concerning the act of B. himself could not be established to us, we decided to commit the cause concerning this under a certain form to our venerable brothers, the Bishops of Langres and Chalon. Therefore, wishing to proceed in execution of our mandate, after summoning the parties to their presence, they received the witnesses produced on both sides, heard the parties' confessions, and published the witnesses' depositions. And because, on account of a certain article that appeared doubtful to them, they proposed to remit the cause to us after it had been instructed, reducing all the acts to writing they enclosed them under their own seals and assigned them to the parties to be faithfully presented to us.]

But the aforesaid B., not deferring to our delegates, or rather to the delegator, violated their seals and was not ashamed to open the writings that were to have been presented to us. Afterwards, established in our presence while his adversary was present, he proposed before us in his own excuse that the judges had proceeded perversely against him, since they had reduced the acts to writing less than faithfully. Hence, fearing lest he was carrying the letters of Uriah, he opened their writings and discovered what he had suspected.

Indeed, if he had better observed what was expedient, he either would not have received the suspect writings or, having received them, would have faithfully presented them to us and shown before us the cause for his proposed suspicion. Moreover, since he did not complain about the judge whom we granted him on our own motion, but rather about the one whom he himself had decided to choose, and the judges had sent their letters to us through him, likewise complaining about him, we decided that faith was not to be given to his words. But, so that he might at least be punished in that in which he had sinned, we were unwilling—as indeed we ought not—to hear him against the judges' acts that he had rashly violated, lest his fraud appear to have brought him protection. [Since, etc. (c. 7, On the Exchange of Things, III. 19.) Given at the Lateran, on the Ides of January, in the fifth year, 1203.]

Chapter XXXIV

Latin source headnote: A delegate is not bound to admit a colleague joined to him through surreptitious letters, nor the latter's subdelegate. This is what it says according to one understanding. Or thus: a delegate is not bound to admit the subdelegate of an impeded colleague if the rescript contains the clause "but if both, etc." This is what it says according to another understanding.

The same, to the Abbot and Chaplain of Saint Mary of Bologna.

Established before our beloved son M., cardinal-deacon of Saint Theodore, whom we granted as auditor to you and to our beloved son H., messenger and cleric of Saint Agatha, your adversary—who had approached the Apostolic See with the instruments of that church but without letters of ratification, although he had given security for ratification by a surety—you took care to propose that, when formerly a certain man in the parish of Saint Mary, after an appeal had been interposed to the Apostolic See, constructed a house and church in honor of blessed Agatha, Pope Alexander of good memory, our predecessor, committed the cause concerning this to T., Abbot of Saint Stephen, and T., Prior of Saint Victor, to be terminated with a due end. After hearing what had been proposed on each side and diligently inspecting the parties' arguments, they rendered a definitive sentence for the church of Saint Mary, which was afterwards confirmed by our predecessors Lucius, Gregory, and Clement of happy memory.

But the chaplain of Saint Agatha disdained to obey the sentence, received the parishioners of Saint Mary to ecclesiastical sacraments, and, while suspended, presumed to celebrate divine offices. And when the parties had disputed the same cause before our venerable brother H., Bishop of Ferrara, for almost a year, with witnesses produced before him, the party of the church of Saint Agatha, suppressing the truth of these matters, obtained that our beloved son Master L., a canon of Bologna, be joined to the same bishop in decision of the cause. When he was unable to take part in the cause, the aforesaid bishop—to whom by subsequent letters impetrated for the third time it was commanded that, if both were unable to take part in executing the apostolic mandates, he should nevertheless fulfill them—after the attestations had been published and the arguments more fully understood, confirmed the aforesaid sentence, enjoining the chaplain of Saint Agatha under penalty of excommunication that he receive none of your parishioners dwelling within certain bounds to divine offices or ecclesiastical sacraments.

To this the said Hugolinus answered on the other side that formerly the Archpriest of Pastino impetrated an indulgence from our aforesaid predecessor Alexander that he might newly found a

church in the village of Castellio, in which the multitude of people had grown exceedingly. Hence the Bishop of Bologna at that time, by mandate of our same predecessor, both marked the site and blessed the foundation stone and placed it in the foundation according to custom; and thus for twenty years he justly possessed the chapel constructed in the same place together with the whole parish that the church of Pastino has to this day. Pope Celestine of happy memory, our predecessor, confirmed it to them by his letters, and we received under our protection the chapel made censual to us by the same archpriest.

Hence, formerly a certain regular canon appointed by the Archpriest of Pastino to celebrate divine offices in that chapel, without authority of the archpriest and chapter of Pastino, appeared before the aforesaid Abbot of Saint Stephen and Prior of Saint Victor after being cited by them, but did not undergo judgment before them. On the contrary, from them as reasonably suspect—because they had wished to claim the aforesaid parish for themselves—he decided to appeal to our hearing. But the same judges, not hesitating to exceed the bounds of the mandate, rendered a sentence concerning both the new and the old population, although according to the tenor of the letters directed to them they could have judged only concerning the old.

But afterwards the aforementioned canon, appearing before the Bishop of Ferrara against the will, or rather prohibition, of his archpriest, litigated for a while before him; but at last, discovering that all the bishop's familiars were adverse to him, he caused the aforesaid master to be joined to him. The messenger of the church of Saint Agatha, however, proposed among other things that, when the said Master L. had delegated his authority to another, the bishop refused to admit the subdelegate, but, after appeal had lawfully been interposed to us, proceeded alone in cognizance of the cause.

Hence, against the first sentence they alleged that nothing concerning the commission impetrated to the first judges reached the archpriest's knowledge; that the judges proceeded after an appeal had been lawfully interposed; and that the bounds of the mandate were exceeded in the proceeding. But against the second they similarly proposed that the regular canon who litigated before the Bishop of Ferrara not only had not been appointed proctor for that cause, but had even presumed to involve himself in the suit contrary to the archpriest's prohibition; that the Bishop of Ferrara had proceeded alone, although the cause had not been delegated to him alone and his colleague, even if unable to take part in the cause, had nevertheless committed his authority to another; and that, after appeal had also been interposed to us, the same man of Ferrara promulgated a sentence for the church of Saint Mary.

But to these things the other party replied that the foregoing could not stand, since it ought not to be believed that the adverse party appealed from those judges when it neither knew nor had heard that letters of commission had emanated to them. Furthermore, since the obstacle of appeal had been closed to the parties in the letters of commission, no deference was to be given to the appeal afterwards interposed. Moreover, since, as the adversary confessed at law, although the party of the one who impetrated the letters in order to pursue the appeal nevertheless did not use them, it ought to be held the same as if the appeal had not been pursued. Hence the sentence had already passed into the authority of a matter adjudged, even if it had been rendered contrary to the litigant's right. And since neither the letters of commission obtained to the first judges were presented at law nor was it otherwise lawfully demonstrated that the judges exceeded the form of the mandate, presumption is rather to be made for the sentence.

What is said on the other side—that that canon was not a proctor—does no harm, since by joining issue before the Bishop of Ferrara he was made master of the suit, having been a general proctor of the church from its foundation, and thus acted and contracted as if he truly were lord of the chapel. This is especially so because he was drawn into the cause not so much in the church's name as in his own, inasmuch as he received to divine offices the parishioners adjudged to the church of Saint Mary and furnished them ecclesiastical sacraments. Furthermore, since it had reached the archpriest's knowledge that the cause itself had been delegated to the Bishop of Ferrara, if he was unwilling to undergo judgment through that canon, he ought to have sent another to conduct the cause. Since he did not do so, it is to be imputed to his negligence, or rather to his malice, since he thus endeavored to enervate our commission.

But, to the contrary, it was answered that the Bishop of Ferrara could proceed alone, since issue had first been joined before him and witnesses produced for the cause, and it had been inserted in the letters of the final commission that, if both were unable to take part in executing the apostolic mandates, the aforesaid bishop should nevertheless take care to execute them. This is understood not as "if they were unable to take part personally or through others," because that would happen rarely or never, but "if he could not take part personally." Therefore, no deference whatever was to be given to the appeal interposed for the aforesaid reasons, since they were not sufficient causes.

The same cardinal, therefore, having heard these and other things proposed on each side, by apostolic mandate confirmed the sentence rendered by the same Bishop of Ferrara and decided that perpetual silence concerning this was to be imposed upon the adverse party. We therefore confirm by apostolic authority what was done by him and fortify it with the protection of the present writing.

Chapter XXXV

Latin source headnote: A place to which the defendant cannot safely come, and a canon delegated in the cause of a fellow canon, can be recused.

The same, to the Provost of Saint Dominic, our Subdeacon.

Since R., a canon of Genoa, obtained that the pecuniary cause disputed between himself on the one side and P., a citizen of Genoa, on the other be delegated to you, and the same citizen, on account of many grave hostilities in his city, is unable to appear in your presence, as became known to us from the intimation of himself and our beloved sons, the consuls of Genoa, by apostolic writings we command your discretion that you leave to the aforesaid R. an option of this kind: with the canons of Genoa excepted, whom the adverse party deservedly holds suspect because they are his associates, he is to choose a judge in the city or diocese of Genoa—in which, as we hold for certain, there are many provident men—before whom the question is to be terminated. By our authority you are strictly to command that judge to take care to terminate that cause with a due end, appeal having been removed, according to the tenor of the rescript obtained from you.

Chapter XXXVI

Latin source headnote: If a delegated judge is commanded to absolve one who says that he was unjustly excommunicated, he ought to absolve him before proof. But if he says that the excommunication is null, the judge shall admit proof of nullity before pronouncement.

The same, to the Archbishop of Rouen.

Since it sometimes happens that laymen—(*And below:* cf. c. 24, On Rescripts, I. 3.)—moreover, we were asked: when someone complains that a sentence of excommunication was promulgated against him by his bishop after an appeal was lawfully interposed to us, or was otherwise promulgated unjustly, and by our letters we give our judges a mandate that, if it is so, either they confer upon him the benefit of absolution according to the form of the Church or declare that sentence null, and the bishop is prepared to prove that he rendered a sentence of this kind against him before he uttered the voice of appeal, or otherwise justly, whether, without the proofs having been admitted, it is lawful for the judges to absolve the excommunicated person or declare the sentence null.

To this we answer you in this manner: concerning the aforesaid case, if we remember well, we have not been accustomed to write to judges under the form prescribed above, but under this one: namely, that, if they find that the sentence of excommunication was rendered after an appeal was lawfully interposed to us, declaring it to be entirely null, they are to hear whatever question remains; otherwise, having received security according to the form of the Church, they are to confer the benefit of absolution upon the complainant and, after enjoining upon him what is to be enjoined by law, hear the cause and take care to terminate it with a due end.

But if perchance it should appear that we have at times written in the aforesaid case under the form previously noted, in the one of the aforesaid cases—namely, when someone complains that he was bound by excommunication after an appeal was lawfully interposed to us—the proofs of both parties are always to be admitted before proceeding to decree anything concerning this. By these it will finally appear whether the complainant requires absolution or instead is to be declared not bound.

But in the case in which someone asserts that he was unjustly excommunicated, his proof is scarcely or never to be admitted before he has been absolved, except only when he asserts that an intolerable error was patently expressed in the sentence of excommunication; to prove this he is admitted before he obtains the grace of absolution. But if he proposes simply that he was unjustly excommunicated and the bishop seeks that his proofs be admitted to prove that he justly excommunicated him, the bishop is in no way to be heard before that person's absolution, since, even if it were established for certain that a sentence of excommunication was reasonably promulgated against him, absolution would nevertheless have to be conferred according to the form of the Church upon one humbly seeking it. And therefore, in this case, we believe that he is to be absolved immediately according to the form of the Church, so that only then, when the proofs of both parties have been admitted, it may be decreed whether he was justly or unjustly bound. [Given at the Lateran, on the Kalends of September, in the thirteenth year, 1210.]

Chapter XXXVII

Latin source headnote: If the subdelegate of a papal delegate has begun to use the jurisdiction, he cannot be removed by the delegate; and, if he has acted contrary to the mandate or exceeded the form of the rescript, the proceeding is null.

Honorius III, to the Archbishops of Messina and Reggio.

By our letters we gave a mandate to our venerable brother the Archbishop of Cosenza that he cause our venerable brother the Bishop of Cefalù to be restored to his episcopate and to the other things of which he had been unduly despoiled. When the latter had been fully restored and had obtained corporal and peaceable possession, if he saw that the same bishop was deservedly suspect of waste,

as had been suggested to us, he was providently to join to him a provident and honorable man as coadjutor, without whose counsel he should do none of those things that pertain to temporal administration, until, the truth having been discovered, we should decide that provision be made otherwise; meanwhile, by our authority, he was strictly to prohibit every kind of alienation to each of them.

Moreover, the same archbishop, burdened by bodily infirmity, committed his authority in a business of this kind first to the Abbot of the Holy Spirit of Palermo, and then to the Treasurer of Cosenza. With the counsel of our brothers, as justice required, we quashed their proceedings that were exhibited to us: namely, because the abbot, contrary to the tenor of our mandate, proceeded to inquire whether the bishop was suspect of waste when the latter had not been restored; and the archbishop himself, when he had already discharged his office by committing his authority in its entirety to the said abbot, could not entrust a business of this kind to the said treasurer.

Chapter XXXVIII

Latin source headnote: If a delegate has pronounced that he has no jurisdiction, he does not reassume it even with the parties' consent.

Gregory IX, to S., Precentor, and Master N., Canon of Amiens.

Know that, by the signification of the woman M. and F., her son, we have learned that, when the noblewoman I., a widow, falsely representing herself as poor, impetrated our letters against them to judges concerning lands and other things, they took care to propose before the judges by way of exception that, because the said letters had been impetrated by the suggestion of a falsehood—since the aforesaid Juliana, who is noble and rich, called herself poor in them—they ought not by law to be convened before them through such letters unless the lord under whose jurisdiction they stand, and before whom they were prepared to furnish to her the fullness of justice, had first been requested. Hence the said judges pronounced interlocutorily that they ought not to proceed by those letters. (*And below:*)

Finally, the parties submitted to certain persons as arbiters in such a manner that, if they did not decide the cause within the term expressed in the submission, the parties would return to the examination of the same judges. But when the arbiters neglected to terminate the cause within the term, the said judges reassumed jurisdiction through the form of that submission. Feeling themselves aggrieved by them, because they compelled them to litigate concerning those matters from which they had been absolved by them, those persons appealed to our hearing. Therefore we command that, if it is so, you revoke as null, etc.

Chapter XXXIX

Latin source headnote: Arbiters chosen for a cause of recusal assign the parties a term for proving the cause of suspicion, and the recused judge compels the arbiters to terminate the cause.

The same.

When a cause of suspicion has been assigned against a judge, not the judge himself, who perhaps, if challenged, would cause harm, but rather the arbiters before whom the proof is to be made, and to whom all things that contribute to this article are known to pertain, can assign a term for this. By the

judge himself also—to whom, just as jurisdiction, so also the other things without which the cause cannot be concluded are understood to have been committed—the same arbiters are to be compelled, if they are in disagreement, to unite in one opinion or concordantly call in a third person with whom two or either one of them may do this, lest on an occasion of this kind the principal business be prolonged beyond what is due.

Chapter XL

Latin source headnote: Delegated jurisdiction cannot be extended to persons not expressed in the rescript, even with their consent.

The same, to the Abbot of Saint Geneviève.

When P. and G., through apostolic letters, complained before you concerning the Bishop of London that he had not repaid at the promised place and term a loan granted by them, while the judgment was pending the layman I., who was bound to the same merchants for a certain sum, wished, as he asserts, to extend your jurisdiction over himself, so that, if he did not pay the aforesaid sum within the appointed term, you would promulgate sentences of excommunication and interdict against his person and land. We decree that the sentences rendered by you on an occasion of this kind are not valid, since, even if you are said otherwise to preside over a jurisdiction, because you had no jurisdiction over the said I., no extension of jurisdiction is known to have existed, since delegated jurisdiction of this kind cannot be extended to other persons.

Chapter XLI

Latin source headnote: One older than twenty years can be appointed a delegate by anyone; the same applies to one older than eighteen, provided that the parties' consent intervenes. But one younger than eighteen cannot be appointed except by the prince.

The same.

Since you had completed your twentieth year, you could be appointed a delegate at an age of this kind. But, when someone is established below that age, a delegation made by anyone other than the prince would not hold unless the parties knowingly consented to one who had passed his eighteenth year.

Chapter XLII

Latin source headnote: The power of several delegates or arbiters appointed simply expires through the death of one.

The same.

When one of the delegates or arbiters, as you propose, was removed from human affairs, their office expired, unless something else had been expressed in the delegation or submission to arbitration.

Chapter XLIII

Latin source headnote: A papal delegate can subdelegate, although he was appointed by virtue of office, or with the parties' consent, or with a clause of preselection, namely, “but if not all, you with another are to execute it, etc.” This is what it says, as far as § But he. § 1. One to whom a business is

committed for personal execution can delegate it to another if the parties consent. It is otherwise in the cases expressed here. This is what it says, as far as § But. § 2. One to whom a bare ministry is committed for execution cannot commit his authority to another; it is otherwise for a legate of the Apostolic See. And it is a notable text and is much alleged. The Sicilian Abbot.

The same.

Since the Apostolic See intends to provide for business and not for the persons to whom the same business is committed, if a third judge, although appointed by us by virtue of our office or with the parties' assent as a common judge for them, delegates his authority to another, because this is conceded by law to one delegated by the prince, his delegation will be valid. The same is also to be said when a bishop is commanded to execute the apostolic mandate with one of his other co-judges, and then the remaining two will be unable to proceed without a subdelegate from the bishop.

§ 1. But one who is enjoined to execute a business personally can delegate it to others, provided that the parties consent, except if we were to command that an inquiry be made or that provision be made for churches concerning prelates or other ministers, since in all these cases we appear to choose the diligence and faith of the person to whom we commit such things.

§ 2. But, with the authority of the legates of the Apostolic See preserved, let it be lawful for no one to whom it has been committed to preach the cross, to excommunicate or absolve certain persons, to dispense with irregular persons, or to enjoin penances, hereafter to entrust these things to others, because in this matter not jurisdiction but rather a certain ministry is committed to him.

Textual note: Two stray ñ characters separating divisions of the Latin source headnote have been removed as transcription artifacts.

Title XXX: On the Office of a Legate

Chapter I

Latin source headnote: A papal legate can be approached even through a simple complaint.

Alexander III, to all the Suffragans of the Church of Canterbury.

Since you are not unaware that our venerable brother the Archbishop of Canterbury presides over you not only by metropolitan right but also by right of legation, it is sufficiently astonishing that certain of you, as we have heard, presume to assert that the same archbishop ought to hear no cause from your bishoprics by either metropolitan or legatine right unless it is brought to him through appeal. Indeed, although perhaps the same archbishop ought not by metropolitan right to hear causes from your bishoprics unless they are brought to him through appeal, nevertheless, by reason of the legation, he can and ought to hear all causes from those bishoprics that reach his hearing through appeal or the complaint of certain persons, inasmuch as he is proved to exercise our authority in his province. Therefore, we command and enjoin that you leave to his judgment the causes that are brought from your bishoprics to the same archbishop, and that you not attempt to deter or impede any cleric or layman of your jurisdiction from being able, if he wishes, to transfer a cause to the aforesaid archbishop.

Chapter II

Latin source headnote: A legate cannot intrude himself into a cause specially delegated by the Pope.

Celestine III.

You have been zealous to ask us whether another who is a general legate in the province can take cognizance of a cause that we delegate to someone, either before cognizance or afterwards, or thus impede the proceeding of our commission that we transmit to a delegated judge. Wishing, therefore, to cut this doubt from your mind, we answer that, since a special mandate derogates from a general one, a legate neither ought nor can impede a commission specially made to another or to others. Hence, even if a sentence has already been promulgated according to the expressed form of our mandate, the legate himself will not be able to annul it in any manner unless he has received a special mandate concerning this. Nevertheless, if it was rendered reasonably, he will be able to confirm it and put it into execution.

Chapter III

Latin source headnote: Even a legate *a latere*, by virtue of a general legation, cannot transfer bishops, subject one cathedral church to another, grant another the right of primacy, unite two bishoprics, or divide one; nevertheless, he can absolve persons excommunicated on account of laying hands upon clerics. This is what it says together with the following chapter.

Innocent III, to the Cardinal-Priest of the Title of Saint Lawrence in Lucina, Legate of the Apostolic See.

Unless that special affection that we have had and have toward your person tempered the just—indeed, most just—movement of our mind, you would learn through instructive punishment how greatly you have transgressed against your own person and how greatly you have offended against the Roman Church, your mother. Although she nourished and exalted you, you appear utterly to have spurned her, since, spurning canonical sanctions and general custom, on your own motion you presumed to do what had neither been done nor heard of: without our special mandate, you transferred in fact—because by law you could not—our venerable brother the Bishop of Troia, chancellor of the kingdom of Sicily, from the church of Troia to that of Palermo. [Indeed, etc.; cf. c. 3, On the Use and Authority of the Pallium, I. 8.]

Textual note: The Latin Library transcription's *quantumcunquae* has been corrected to *quantumque*, the reading required by the parallel construction and printed by Friedberg.

Chapter IV

Latin source headnote: This was summarized above in the preceding chapter.

The same, to the same.

That we are unwilling to hold ratified the transfer of the pontiff from the bishopric of Troia to the metropolis of Palermo made by you was induced in us not by a zeal of bitterness but of rectitude. For, although a general legation in the kingdom of Sicily was committed to you, nevertheless, without our special mandate you ought not to have extended your hands to those things that, as a sign of singular privilege, are reserved only to the Supreme Pontiff. Yet even if certain of those things that were often granted to legates by special concession—namely, the absolution of those who, on account of

sacrilegious laying of hands upon clerics, fall under the canon of the promulgated sentence—appear already to be lawful for legates by virtue of the office of legation itself, do you think that, because we committed our authority to you to be executed as legate, you could subject the church of Palermo to Messina, so that you might set the latter over the former by granting to it the privilege of primacy? Do you think that, from the same cause, it is lawful for you to unite two bishoprics or divide one without special license?

Therefore, do not reckon that it was done in hatred of him or to your injury, but so that the privilege of Peter may remain unshaken, since Pope Alexander of happy memory, our predecessor, did something nearly similar by resisting the presumption of a legate whom he had sent into Spain when the legate wished to attempt something similar. [But concerning, etc.; cf. c. 11, On the Times of Ordination, I. 11.]

Chapter V

Latin source headnote: From the point at which a legate has referred a cause to the Pope, he ceases to be its judge.

The same, to the Bishop of Bologna and M., Chaplain, our Subdeacon.

Although the canons of Trani had dissented at the beginning, nevertheless all at last unanimously consented, electing our beloved son G., brother of the Abbot of Cassino, as archbishop. Our venerable brother the Bishop of Porto, at that time legate of the Apostolic See, ordered his election to be examined and caused the examination reduced to writing to be secured with the seals of our beloved sons the archdeacon and Master Petrarcha, and also with his own seal, to be transmitted to the Apostolic See. He also sent us his letters of entreaty for the said brother of the Abbot of Cassino. Three of the canons of the church of Trani, sent by the whole chapter, humbly presented them to us together with the decree of election strengthened by the subscriptions of all the canons, and also the letters of the suffragans and the people, seeking that the canonical election celebrated concerning a suitable person be confirmed by apostolic authority.

But, for greater caution, we received from the aforesaid canons an oath, not exacted by us but offered by them, and diligently examined the fact of the election, as is both customary and lawful. Meanwhile, the messenger of the aforesaid Abbot of Cassino presented us his letters containing a grave complaint against the aforementioned legate: after he had examined the election and transferred it to the examination of our deliberation, when the messengers had already been directed, he again presumed, with excessive malice, to examine the same election. Hence he sought that the fact itself be diligently inquired into by suitable men free from suspicion.

And when the aforesaid bishop later arrived and we learned from him the things that had been done, with the common counsel of our brothers, we adjudged the second examination null and void, as having been made by one who was not its judge after the business had been transferred to our examination. [Nevertheless, because, etc. Given at the Lateran, on the eighth day before the Kalends of July, 1202.]

Chapter VI

Latin source headnote: A legate *a latere* confers a vacant benefice, although it pertains to the presentation of some cleric. This is what it says, and it is a notable case.

The same, to the Abbots of Saint P. and Saint Leo, and R., Archdeacon of Toul.

Our beloved son R., a canon of Metz, humbly intimated to us that, when our venerable brother the Bishop of Palestrina, legate of the Apostolic See, liberally conferred upon him the church of Saint Trudo upon its own pastor's resignation made into the legate's hands, our beloved son B., Archdeacon of Metz, to whom presentation to that church pertained, asserting that it could not be conferred by the legate without his having been consulted, less than reasonably opposing himself to the grant, presumes unduly to molest the canon himself concerning the same church.

Therefore, since the prelate has more right in conferral than the patron in presentation, nor is prejudice done to the prelate if at times a church is granted by a legate of the Apostolic See without his having been consulted, by apostolic writings we command your discretion that, after prior admonition, by ecclesiastical censure and with appeal removed, you compel the said archdeacon to desist from his undue molestation concerning this. [No letters, etc. Given at Anagni, on the tenth day before the Kalends of March, in the sixth year, 1204.]

Chapter VII

Latin source headnote: A legate appointed for several places can exercise his jurisdiction in any one of the said places in such a way that he can conclude in one place what was done in another. This is what Panormitanus says.

The same, to the Illustrious King of the French.

He who is ignorant of nothing knows that to the royal sublimity—(*And below:*)—on your part we received a complaint, namely, that, although the legate was suspect to you for a certain reason, after an appeal was interposed to us he promulgated a sentence of interdict against your land outside the boundaries of the kingdom of the French. They also promised and offered to swear upon your soul that you would stand to law concerning this business before our legates and delegates, and that on account of a business of this kind you had been cited neither by us nor by another on our behalf to obey the law, you seeking that the aforesaid sentence be relaxed upon receipt of security of this kind. But to the things that they had objected against the cardinal, we have answered both them and your magnificence: although he had departed from the boundaries of the kingdom of the French, nevertheless he had not yet left the limits of his legation, since he had received from us the solicitude of legation enjoined upon him not only in the kingdom of the French but in the provinces of Vienne, Lyon, and Besançon.

Chapter VIII

Latin source headnote: When a legate *a latere* is present, a lesser legate ought to relinquish execution of his office.

Gregory IX, to the Patriarch of Jerusalem.

Wishing—(*And below:*)—we have decided that the office of legation in your province should be committed to your fraternity, in such a way, nevertheless, that, if it should happen that a legate *a latere* is sent to those regions, for reverence of the Apostolic See you are entirely to relinquish execution of that office for as long as that legate is there.

Chapter IX

Latin source headnote: A legate not *a latere* but by reason of his person cannot, outside the province decreed to him, absolve persons excommunicated for laying hands upon clerics; nor can he do so even within the province if such excommunicated persons come there from elsewhere. But a legate by reason of dignity absolves no such persons. This is what it says according to the common understanding.

The same.

Legates of the Roman Church who are not sent *a latere* cannot impart the benefit of absolution to persons excommunicated for violent laying on of hands outside the province committed to them, or within it if those who laid hands in this manner should happen to come there from elsewhere. Nor can those who, under pretext of their churches, claim the dignity of legation for themselves impart it even to subjects situated within their province, unless by special grace something more is granted by the Apostolic See to the former and the latter.

Chapter X

Latin source headnote: A legate's statutes endure even after the legation has ended; nevertheless, the jurisdiction of his delegate ends if citation did not precede.

The same.

We wish it to be doubtful to no one that statutes issued by legates of the Apostolic See in the province committed to them endure as perpetual, although they afterwards departed from it. It is otherwise, however, if they decided to delegate causes to certain persons, since the jurisdiction of the latter expires if their citation did not precede the legates' departure.

Title XXXI: On the Office of an Ordinary Judge

Chapter I

Latin source headnote: Bishops can inquire into and punish crimes in their dioceses and, when there is need, invoke the secular arm.

From the Synod of Pope John.

A pernicious [custom has grown up: a public judge or minister sells, as though matters for inquiry, the sins of the people that are to be inquired into by the bishops, to whom solicitude for souls is committed; and on that occasion a criminal life is freely increased. If they find adulterous women on the property of a church or cleric, they defame, seize, and tear them until their lords or parents redeem them, on account of which their blood relatives fall into no slight poverty; and in this order, after the sale, they do not fear to fornicate more freely, saying that nothing pertains to the bishop concerning one who is known to have been examined and redeemed by the public authority—which manifestly has grown up in an entirely irregular manner.]

Therefore, let the bishops of the individual cities have in their dioceses free power to inquire into, avenge, and adjudicate adulteries and crimes according to what the canons decree, without impediment from anyone. And when there is need, let them summon public assistance [to repress

rebels and contemners], not for doing prejudice but rather for pursuing those things that are pleasing to God [and accord with the salvation of souls].

Chapter II

Latin source headnote: An ordinary who knows—not as judge or man, but as God—that a subject is guilty of a crime can reproach or punish him indeterminately, but not by name.

Pope Eugenius.

If a priest knows for certain that someone is guilty of some crime, or if he has confessed and is unwilling to amend, unless someone can prove it by judicial order, he ought not to reproach him by name but indeterminately, as Christ said: "One of you is about to betray me." But if the one to whom damage was inflicted should seek justice, he can excommunicate the author of the damage, even though he confessed to him. Nevertheless, he cannot remove him from communion by name, although he knows him to be guilty, because he knows it not as judge but as God. But he ought to admonish him not to intrude himself, because not even Christ removed Judas from communion.

Chapter III

Latin source headnote: If an ordinary subject to a bishop renders a just ecclesiastical censure against one subject to him, the bishop ought to preserve it and ought not to relax it without satisfaction and the knowledge of the person who rendered it.

Alexander III, to the Bishop of Florence.

When an ecclesiastical sentence is promulgated against certain malefactors by prelates of churches, it ought to stand ratified and firm and to be observed inviolably until fitting satisfaction. Therefore, by apostolic writings we [by way of precept] command your discretion that, whenever our beloved son Lan., pleban of Saint P. of Lucar, has reasonably rendered a sentence of interdict or excommunication against his clerical or lay parishioners, you are to cause it to be inviolably observed and not relax it without suitable satisfaction and without the knowledge of the same pleban.

Chapter IV

Latin source headnote: If the ordering of a vacant church, even one subject to patronage, is deferred for a just cause, a steward is to be placed there by the bishop.

The same, to the Archbishop of Canterbury and his Suffragans.

Since it is often necessary for you to defer the ordering of churches for the reason that at times persons less suitable are presented to you, or that at times, for another cause, a root of dissension has emerged between you and those presenting the persons, we must provide that meanwhile, on occasion of this dissension and scandal, the fruits of those churches not perish or grave losses befall them in spiritual things. Hence it is that by apostolic writings we command your fraternity by way of precept that, whenever in those vacant churches in which an ecclesiastical person does not have the presentation you are unable by law to institute persons in them, either because persons less suitable are presented to you or for another cause, with [contradiction and] appeal removed, you are to place stewards who ought to receive the fruits of the churches and either expend them for the utility of the churches or faithfully reserve them for the future persons.

Textual note: The Latin Library transcription's ungrammatical *ex iuxta causa* has been corrected to *ex iusta causa*.

Chapter V

Latin source headnote: If it is established to the ordinary that one absolved by the Pope suppressed the true cause for which he had been excommunicated, he ought to remit him to the Pope. But if it is not established to him, although there is nevertheless a pressing suspicion against the person, he ought to compel him to purge himself.

The same, to the Archbishop of Canterbury.

On your part it has been proposed to us by constant assertion that at times certain persons excommunicated for particular causes visit the Apostolic See and, keeping silent the causes for which they are bound by the bond of excommunication, carry back letters concerning their absolution containing that they approached the Apostolic See and, after their confessions had been heard, merited the benefit of absolution. Hence, because you wished to consult us whether the absolution holds of those who, after concealing the excesses for which they had been excommunicated, merited the benefit of absolution through the Apostolic See while putting forward another cause for their excommunication, we answer your consultation in this manner: if it should be established to you that it is so, you ought by ecclesiastical censure to compel them to return to the Apostolic See with your letters containing the truth of the matter. But if this is not established to you and you hold them suspect of not having confessed the truth, you ought to compel them concerning this to furnish purgation before you that they confessed the truth.

Chapter VI

Latin source headnote: If, through the sloth or malice of a papal delegate, someone perseveres in sin, the ordinary of the place can supply what is lacking, notwithstanding that the cause was committed to a delegate. This is what it says, and it is a notable and exceptional case.

Celestine III.

Your fraternity signified to us that certain of your parishioners, when they are marked by excommunication for an illicit union of consanguinity or affinity, impetrate letters of commission from the Apostolic See to judges farther away. When they have been absolved from excommunication by these letters, because the said delegates neither approach the place where witnesses to the consanguinity or affinity can be produced nor send anyone to receive them, they remain in the aforesaid union of a nefarious conjunction, and the cause does not obtain its due effect.

Hence you sought from us what is to be done by you in such a circumstance. Therefore, because through the malice or sloth of a delegated judge no one ought to find support for remaining in the union of an iniquitous conjunction, in this consultation we give your fraternity this answer: as often as it should happen that the things we have stated above occur in your diocese, you can lawfully recall those so absolved into the former sentence of excommunication and hold them bound by that sentence until the cause begins to have lawful progress in reception of the witnesses and in other matters, or you receive another mandate concerning this from the Apostolic See. [But, etc.; cf. c. 6, On Compelling Witnesses, II. 21.]

Chapter VII

Latin source headnote: An ordinary supplies for the negligence of an abbot who does not recall a wandering monk.

Innocent III, to the Archbishop of Auch.

The more studiously the devotion of religious men adheres to divine mandates and intends to please its Creator through works of holy conduct, the more the enemy of the human race labors for their seduction by the maliciousness of his fraud, furnishes them in various ways with material for transgressing, and endeavors to ensnare their souls with an inextricable snare. Indeed, know that it has reached our hearing that monks, canons, and other regulars of your province, although they ought rather to keep watch in the cloister in divine services according to regular statutes, after gathering money from obediences and revenues whose care they administered, abhorring the cloister, do not fear to run about through the courts of princes and powerful men. With their gifts they acquire their favor and grace for themselves; relying upon their familiarity, they stir up grave dissensions in their convent and, scorning the humility of the others in a spirit of arrogance, exist as disobedient and contumacious toward the mandates of their prelates and immerse themselves in the solicitudes of secular business contrary to their prohibition.

Therefore, because the order of religion is not a little enervated on account of this, by apostolic writings we command your fraternity that, whoever you find to be such persons, unless at your admonition they return to soundness—so that they resign their own property without difficulty into the hands of their prelates, to be converted to the utility of the house according to the abbot's counsel, and observe the regular life—if their prelates, after your admonition, negligently omit to execute this, you are to compel those regulars through suspension from office and benefice, with appeal removed. [Given at the Lateran, on the fourteenth day before the Kalends of April, 1198.]

Chapter VIII

Latin source headnote: One excommunicated by one bishop is to be avoided by others. And an archbishop approached by complaint shall not absolve unless he first remits the person.

The same, to the Archbishop of Rouen and his Suffragans.

For repressing the malice of the perverse, certain penalties have been established in the canons. Just as you wish those rendered by you at times against subjects to be inviolably observed, so you ought inviolably to observe those rendered by others. Therefore, by apostolic writings we command that the sentences that our venerable brother the Bishop of Lisieux should decide canonically to promulgate against his subjects, both you yourselves are to preserve and you are to cause them to be inviolably observed by your subjects.

§ 1. But you, brother archbishop, since a sentence of excommunication is not suspended through the objection of an appeal, if anyone excommunicated by a bishop has complained to you concerning an unjust excommunication, are to remit him to that bishop to be absolved according to the form of the Church, deferring to him as a fellow bishop. But if perchance he is unwilling to absolve him, after receiving sworn security you will be able to furnish him the gift of absolution, in such a way, nevertheless, that, unless it should be lawfully established to you that he was excommunicated contrary to justice, by debt of his oath you are to command him to make competent satisfaction to

the same bishop concerning that for which he was marked by excommunication. But if perchance he should disdain to do this, do not omit to return him to the sentence of excommunication, with appeal removed. [Given, etc., on the Kalends of June, 1198.]

Chapter IX

Latin source headnote: A patriarch does not take cognizance of the causes of the subjects of archbishops and bishops under him except through lawful appeal or by force of custom or privilege.

The same, to the Archbishop of Tours.

Two things together—namely, a consultation and a complaint—were contained in a single petition of your fraternity. Through it you complained concerning our venerable brother the Patriarch of Jerusalem that your clerics were being unjustly aggrieved together with you, since, spurning your judgment, before which they are prepared to furnish the fullness of justice to those lodging a complaint concerning them, he compels them to answer before himself, although the cause is by no means brought to him through appeal; and you sought to be taught by our letters whether they can by law be compelled to this.

Wishing, therefore, to provide for you concerning the aforesaid grievances, we answer your consultation in this manner: since it is defined in the canons that primates or patriarchs have no right beyond others except insofar as the sacred canons concede or ancient custom conferred upon them from antiquity, so that the churches' privileges are preserved according to the Nicene rules—unless the Apostolic See should decree that some church or its rector be honored with some special privilege—we answer with the counsel of our brothers that, for as long as your clerics are willing to stand to law before you, they ought not to be compelled to undergo the judgment of that patriarch unless the cause should perhaps be brought to his hearing through appeal, or unless, which we do not believe, something concerning this has been granted to him by the Apostolic See. [Given at the Lateran, on the Nones of January, 1199.]

Chapter X

Latin source headnote: An impeded archbishop can commit the consecration of his suffragan to another, and the one to be consecrated is bound to receive the gift of consecration from that commissioner.

The same, to the Archbishop of Tours.

That you consult the Apostolic See concerning those things that are doubtful to you we consider pleasing and acceptable, and your fraternity consequently appears deservedly commendable, since the law of the divine constitution has placed that see as mistress of the whole terrestrial world, so that the reason for whatever is doubted by anyone may at last be sought from it. You indeed consulted us whether, if perhaps, detained by some infirmity or another just cause, you were unable to consecrate one of your suffragans, it would be lawful for you to commit your authority to one of your fellow bishops; and whether an elect who was pressing for consecration ought lawfully to be consecrated by him to whom you had thus committed your authority.

In this we answer your consultation in this manner: when placed in such a circumstance, it is lawful for you to commit your authority, as has been said, and the one to be consecrated ought to receive

the gift of consecration from him to whom you decide to commit it, provided that he is held to be Catholic and no impediment from the withdrawal of the grace of the Apostolic See stands in his way. [Given at the Lateran, on the sixteenth day before the Kalends of June, 1199.]

Chapter XI

Latin source headnote: An archbishop can commit to subjects of his suffragan a cause brought to him through appeal, but cannot compel them to receive it. This is what it says, as far as § Moreover. § 1. When a papal delegate who excommunicated the defendant or inducted the plaintiff into possession has died, if his successor succeeds in the delegation, he will be able to absolve and restore possession; otherwise, the Pope alone shall restore and absolve, except at the moment of death. Nevertheless, lest the annual prescription run, the defendant shall furnish security before the ordinary, or public persons, that he will stand to law. This is what it says.

The same, to the Bishop of Ely.

Of the pastoral office—(*And below:* cf. c. 28, On the Office of a Delegated Judge, I. 29.)—on your part it was moreover asked whether, if some cause has been brought to an archbishop through appeal, he can by right of ordinary power delegate it to a subject of his suffragan or punish the same person if he refuses to receive the delegated cause. To this we answer that an archbishop cannot compel him against his will to receive a delegation of this kind, since, except in certain articles, he has no power over him, although his bishop is subject to the archbishop by metropolitan law. [Moreover, etc.; cf. c. 28, On the Office of a Delegated Judge, I. 29.]

§ 1. Moreover, you sought to be taught whether, without a special mandate of the Apostolic See, it is lawful for anyone, when the delegate who bound the defendant with the bond of excommunication for manifest contumacy or inducted the claimant into possession of the things sought for the purpose of preserving the property has been removed from human affairs, to impart the benefit of absolution to that person when he wishes to obey the law and to restore possession within a year, sufficient security first having been received. To this we say that, since a delegate, with respect to that matter, is greater than the ordinary, one excommunicated by a delegate of this kind cannot obtain the grace of absolution through another without a mandate of the Supreme Pontiff, except at the moment of death, unless perhaps that delegate was of such a kind that another succeeds him in burden and honor. Nor will he be able to recover lost possession through anyone other than the Supreme Pontiff.

Nevertheless, lest the other become a true possessor after a year, he can offer and furnish security that he will obey the law—before the ordinary or, if he is unable to have access to him, before public and honorable persons—as though interrupting the annual prescription, so that after the year he may thus merit to recover possession through the Apostolic See. [You asked, etc.; cf. c. 53, On Appeals, II. 28. Given at Rome at Saint Peter's, on the fourteenth day before the Kalends of January, 1204.]

Textual note: A stray ñ character between the two divisions of the Latin source headnote has been removed as a transcription artifact.

Chapter XII

Latin source headnote: Through a rescript by which the Pope commands an ordinary to correct his subjects, the Pope does not thereby make him a delegate; therefore, appeal can be taken from him to the next superior, just as if the Pope had made no mandate. This is what it says.

The same, to the Archbishop of Sens.

Although in correcting excesses according to canonical sanctions the subterfuge of appeal is closed, and therefore our venerable brother the Bishop of Paris received from us a mandate that, with respect both to monks and other religious men and also to secular clerics subject to his jurisdiction who are said to commit many grave crimes that tend not only to the loss of souls but also to the scandal of many, he inquire into and correct, with appeal removed, the things he sees are to be corrected, establishing for their reformation what is regular and honorable, nevertheless, because it neither was nor ought to have been our intention to derogate from your jurisdiction through a mandate of this kind, by authority of these presents we have decided to declare that, if perchance in inquiries to be made by the same bishop not as delegate but as ordinary some case should emerge in which it is lawful to appeal to the metropolitan see, we are unwilling, on occasion of the aforesaid mandate, to derogate in any way from your authority so as to prevent appeal from being taken to you as metropolitan.

You, however, are neither personally to impede nor to cause impediment through others to the same bishop's executing the debt of his office in correcting the excesses of his subjects; and if perchance appeal has been taken to you in a permitted case, you are to proceed prudently and justly in the cause of appeal. [Given at Rome at Saint Peter's, on the fourteenth day before the Kalends of January, in the tenth year, 1207.]

Chapter XIII

Latin source headnote: Prelates correct and reform subjects, with appeal removed and notwithstanding custom. Nevertheless, if a chapter has been accustomed to correct the excesses of canons, and does not do so within a term to be fixed by the bishop, the bishop himself shall do this. This is what it says, as far as § But. § 1. If canons, without a manifest and reasonable cause, especially in contempt of the bishop, cease from divine offices, the bishop shall not observe the cessation, and the metropolitan shall take cognizance in place of the Pope. This is what it says. § 2. A prelate ought, in imposing a penalty, to guard against monetary gain and every other grievance. This is what it says, as far as the end.

The same, in the General Council.

By an inviolable constitution we sanction that prelates of churches prudently and diligently attend to correcting the excesses of subjects, especially clerics, and reforming their morals, lest their blood be required from the prelates' hands. But so that they can freely exercise the office of correction and reformation, we decree that no custom or appeal can impede their execution, unless they exceed the form to be observed in such matters. Nevertheless, the excesses of canons of a cathedral church that have been accustomed to be corrected by the chapter are to be corrected by it, in those churches that have hitherto had such a custom, at the bishop's admonition or command, within a competent term to be fixed by him. Otherwise, from then on, the bishop, having God before his eyes, [all contradiction ceasing], is not to postpone correcting them by ecclesiastical censure as the care of souls requires. [And he is not to omit correcting their other excesses as the cause of souls requires, with due order nevertheless observed in all things.]

§ 1. But if the canons, without a manifest and reasonable cause, especially in contempt of the bishop, should cease from divine offices, the bishop, if he wishes, is nevertheless to celebrate in the cathedral

church; and the metropolitan, at his complaint, as delegated by us concerning this, having ascertained the truth, is so to chastise them by ecclesiastical censure that through fear of punishment they do not presume to do such things hereafter.

§ 2. Therefore, let prelates of churches diligently provide that they do not convert this salutary statute to monetary gain or another grievance, but studiously and faithfully execute it if they wish to escape canonical vengeance, since, with the Lord as author, the Apostolic See will watch most attentively concerning these matters.

Textual note: Two stray ñ characters separating divisions of the Latin source headnote have been removed as transcription artifacts.

Chapter XIV

Latin source headnote: When within a city or diocese there are peoples of diverse languages, the bishop ought to provide for them through suitable men who celebrate offices for them and minister sacraments according to the diversity of languages. And if necessity is pressing, he shall constitute for himself a vicar-bishop of that language; nevertheless, the same diocese ought not on this account to have two bishops.

The same, in the same Council.

Since in very many regions within the same city and diocese peoples of diverse languages, having diverse rites and customs under one faith, are intermingled, we strictly command that the pontiffs of cities or dioceses of this kind provide suitable men who, according to the diversity of rites and languages, celebrate divine offices for them and minister ecclesiastical sacraments, instructing them alike by word and example. But we altogether prohibit one and the same city or diocese from having diverse pontiffs, like one body having diverse heads, as though a monster. But if, on account of the aforesaid causes, pressing necessity should demand it, the pontiff of the place, with provident deliberation, is to constitute for himself in the aforesaid matters a Catholic prelate conformed to those nations as vicar, who is to be obedient and subject to him in all things. Hence, if anyone should intrude himself otherwise, let him know himself struck by the sword of excommunication; and, if he does not thus return to soundness, he is to be deposed from every ecclesiastical ministry, with the secular arm employed, if necessary, to repel such great insolence.

Textual note: The Latin Library headnote's *duos episcopus* has been corrected to the grammatically required *duos episcopos*.

Chapter XV

Latin source headnote: Bishops who cannot act personally are bound to take suitable men who supply their place with respect to preaching, visitations, and hearing confessions; and, so that bishops can find such men, it commands that such persons be instituted in cathedral and collegiate churches.

The same, in the same Council.

Among the other things that pertain to the salvation of the Christian people, the nourishment of the word of God is known to be most necessary for them, because, just as the body is nourished by material food, so the soul is nourished by spiritual food, because “man lives not by bread alone, but

by every word that proceeds from the mouth of God." Hence, since it often happens that bishops, on account of their manifold occupations, bodily infirmities, hostile incursions, or other occasions—not to say a defect of knowledge, which is altogether to be reproved in them and is hereafter not to be tolerated—are insufficient personally to minister the word of God to the people, especially throughout large and extensive dioceses, we sanction by a general constitution that bishops take suitable men, powerful in work and speech, to execute the office of holy preaching beneficially. When those bishops are unable to act personally, these men, solicitously visiting in their place the congregations committed to them, are to edify them by word and example; and the bishops themselves, when those men are in need, are suitably to minister necessities to them, lest through a lack of necessities they be compelled to desist from what they began.

Hence we command that suitable men be ordained in cathedral as well as other conventual churches, whom bishops can have as coadjutors and fellow workers not only in the office of preaching but also in hearing confessions, enjoining penances, and the other things that pertain to the salvation of souls. But if anyone should neglect to fulfill this, let him lie under strict vengeance.

Chapter XVI

Latin source headnote: A bishop ought to be content with episcopal rights in the churches of his diocese, and it declares what the episcopal rights are.

Honorius III, to the Bishop of Assisi.

By the complaint of the steward of the monastery of Saint Benedict of Mount Subasio it became known to us that you, not content with the episcopal rights that you ought to have in the churches or chapels of that monastery, exact procuration from certain of them, which, he proposed, were by no means sufficient to furnish procuration. He sought that, being content with your right, you desist from molestation of the said churches concerning the other matters, seeking also, for cutting away every material for litigation in the future, that you specify what things belong to you in them by reason of episcopal right. After certain of these episcopal rights had been specified, issue was lawfully joined on each side concerning the aforesaid matters.

But we, having inspected the proofs received on both sides and more fully understood the matters proposed by each party, decreed that in the churches or chapels of your diocese pertaining to that monastery you are to have canonical obedience, subjection, and reverence; institution and destitution; correction and reformation; ecclesiastical censure; jurisdiction also over all causes that by law pertain to the ecclesiastical forum; penances and conferral of all sacraments that are to be received from a bishop; a synod; two solidi of Lucchese money in the name of synodaticum or cathedraticum; a fourth of tithes and mortuary dues; and also annual visitation—in such a way that, when you approach to visit them, you exact from them in the name of procuration no more than, after their resources have been weighed, they can moderately furnish, lest they be burdened in any way in procurations beyond the other chapels of the same diocese. And we entirely relieve the church of Saint Paul of Assisi from the burden of procuration.

But you, being content with these rights in the aforesaid churches, are to exact no more from them beyond moderate aid, which, according to the form of the Lateran Council, if a manifest and reasonable cause exists, is to be sought with charity, just as we sustain it from the other churches of the same diocese for the necessity of the time.

Chapter XVII

Latin source headnote: A bishop visiting a monastery is not to introduce secular persons, but two or three of his canons together with certain religious persons.

The same, to the Abbot and Convent of Saint Remigius.

So that, according to the edict of that supreme shepherd after Christ, a shepherd is known to have been made a pattern of the flock from the heart, he ought beneficially to visit it not from lust for domination but from love of ruling rightly, so reproving the excesses of delinquents insofar as he can that he does not reveal them, so rebuking that he does not confound them; because, since according to the wise man's edict a friend is to be reproved in secret, he appears to violate the law of friendship if, to the contrary, he reproaches him publicly with upbraiding.

Therefore, considering that it is indecent for secular persons to be present when our venerable brother the Archbishop of Reims exercises the office of visitation in your monastery—persons through whom material for dissipation could arise in the cloister, since they are by no means well introduced among cloistered persons—by authority of these presents we firmly prohibit him hereafter from introducing any secular persons with him into the chapter during the time of visitation, except two or three canons of his church in decent habit, with other men, religious persons whom he sees to be expedient, joined to them.

Chapter XVIII

Latin source headnote: Diocesan law and the law of jurisdiction are distinct; hence, a matter adjudged under one does not stand in the way of one acting under the other.

The same, to the Bishop of Bayeux and the Archdeacon of Rouen.

Our beloved son the abbot of the monastery of Rothomagensis in the diocese of Vannes explained before us that a third part of the amercements that the men of five parishes assigned to the uses of his convent are compelled to pay for their excesses has pertained to his monastery from antiquity; and that, when an ecclesiastical question has arisen among those men, citation pertains to the same abbot, while examination and decision of the question pertain in common to our venerable brother the Bishop of Vannes and the abbot himself.

And when Pope Innocent of happy memory, our predecessor, after the same abbot complained that the aforesaid bishop was troubling him concerning this, gave you a mandate with the parties' assent that, after summoning the parties and hearing the matters proposed on each side, you remit the cause to him sufficiently instructed, the said bishop impeded your proceeding for a rather long time on occasion of a certain sentence rendered for him concerning certain churches with respect to diocesan law. Hence the aforesaid abbot humbly entreated us that, since citation, examination and decision of causes, and amercements are known to pertain to the law of jurisdiction, we not permit the proceeding of the business to be further impeded under pretext of the aforementioned sentence. Therefore, since the aforesaid matters belong to the law of jurisdiction, we command your discretion that, notwithstanding a sentence of this kind, you proceed in the business itself according to the form handed down to you.

Chapter XIX

Latin source headnote: Through a rescript by which the Pope commands an ordinary to correct the clerics of his diocese, jurisdiction over exempt persons is not given to him.

Gregory IX, to the Bishop of Sovana.

We consider it grave [and unworthy] that, although you have no ordinary or even delegated jurisdiction over the church of Saint Mary of Orbetello and certain other churches existing in your diocese and pertaining to the monastery of Saint Anastasius in the City, on occasion of our letters that we transmitted to you concerning correction of clerics, you promulgated sentences of interdict against those churches and of suspension against their clerics, although the abbot of the same monastery is prepared to correct them, [as pertains to him; but because we ought the less to sustain injuries to that monastery insofar as, specially pertaining to us, it regards us after God as its principal helpers, then by apostolic writings firmly commanding your fraternity] we command that, if it is so, prudently correcting personally the things that you less than providently attempted, you relax the aforesaid sentences [within eight days after receipt of these presents] without [any] difficulty. [Otherwise, by our letters we give a mandate to our beloved sons the Abbots of Saint Justus and Albaren., and the Archpriest of Saint John of Montalto, of the dioceses of Tuscania, Sovana, and Castro, that from then on they take care to relax the same sentences by our authority.]

Textual note: The web transcription's *Suanensis est Castrensis* has been corrected to *Suanensis et Castrensis*; the three adjectival place-names modify *dioecesis* distributively.

Chapter XX

Latin source headnote: An ordinary who has power to absolve from excommunication can entrust absolution to others.

The same.

It is lawful for those to whom, by virtue of office in certain cases, it pertains to absolve persons who fall under the canon of the promulgated sentence for violent laying on of hands to commit absolution of this kind to others when they see it to be expedient.

Title XXXII: On the Office of a Judge

Chapter I

Latin source headnote: It pertains to the office even of a delegated judge to provide an advocate for a party that cannot have one; and he will be able to appoint a member of his household.

Honorius III, to the Archbishop of Saint Leonard and the Abbot of Salerno.

We learned from your letters that, when we decided to commit to you the cause disputed concerning certain possessions of the monastery of Saint Peter of Amalfi between our beloved sons the Abbot and Convent of Fossanova on one side and the Abbot and Convent of the monastery of Cava in the diocese of Salerno on the other—possessions that brother Sylvester of good memory, a monk of Fossanova, when he had visited the same monastery of Saint Peter, sold to the same Abbot and Convent of Cava to the prejudice and grievance of that monastery of Saint Peter—after the parties

had been established in your presence, the party of the aforesaid monastery of Saint Peter proposed that it could not have anyone from the city of Salerno as advocate and implored your office concerning this. You, brother archbishop, provided for it Master R. Capuda, Treasurer of Acqui and your cleric, to furnish protection in that cause. But Brother Stephen, Prior of Saint Mary de Dompno, a monk of Cava, proposed for his monastery that this had been done to its prejudice because the said R. was your cleric and member of your household.

We, therefore, being unwilling that decision of the business be impeded by frivolous exceptions, decided to remit the cause itself to you. By apostolic writings we command that, notwithstanding this, granting them the aforesaid advocate, you are to proceed in the business itself, with the obstacle of appeal removed, without the loss of delay, reason leading the way, according to the contents of the former letters. And because the Abbot and Convent of Cava are said maliciously to conceal the instruments of the monastery of Saint Peter that the said S. delivered to them at the time of that sale, after prior admonition you are to compel them by ecclesiastical censure, as shall be just and with appeal set aside, to exhibit them to you.

Chapter II

Latin source headnote: When the noble office of the judge is invoked, joinder of issue occurs; it is otherwise with the mercenary office.

Gregory IX.

The office of a judge, wherever it is proposed in place of an action—as when restitution *in integrum* is principally sought—requires joinder of issue; in other cases, recourse can be had to it without joinder of issue before and after entry into the cause.

Title XXXIII: On Superiority and Obedience

Chapter I

Latin source headnote: The one ordained first, other things being equal, is to be held first and greater.

Gregory, to Augustine, Bishop of the English.

Since it is certain [that ineffable rewards of the eternal kingdom are reserved for those laboring for almighty God, it is nevertheless necessary for us to bestow upon them benefits of good things, so that from remuneration they may be able to labor more abundantly in zeal for spiritual work. And because the new church of the English, by the Lord's bestowal and your labor, has been brought to the grace of almighty God, we grant you in it the use of the pallium solely for conducting the solemnities of Mass, in such a way that you ordain twelve bishops throughout the individual places, who are to be subject to your rule, so that hereafter the bishop of the city of London ought always to be consecrated by his own synod and receive the pallium of honor from this holy and apostolic see, in which, with God as author, I serve.

But we wish you to send to the city of York a bishop whom you yourself shall judge ought to be ordained, in such a way that, if that city together with the neighboring places receives the word of God, he also is to ordain twelve bishops, so that he may enjoy metropolitan honor; for, if life

accompanies him, with the Lord's favor we also arrange to bestow the pallium upon him. We nevertheless wish him to lie under the disposition of your fraternity. But after your death, he is so to preside over the bishops whom he shall ordain that he is in no way subject to the rule of the Bishop of London.]

But hereafter let this be the distinction of honor between the bishops of the cities of London and York: that one is to be held first and greater who was first ordained by the counsel of the community and harmonious action. [But your, etc. Given on the tenth day before the Kalends of July, in the nineteenth year of the reign of our lord the most pious Augustus Maurice Tiberius, the eighteenth year after the consulship of the same lord, the fourth indiction, 601.]

Chapter II

Latin source headnote: One who comes against the decree or constitution of a bishop ought to be excommunicated.

The same.

If anyone should come against a bishop's decree, let him be cast out from the Church. In the Book of Kings it is read: "He who does not obey the prince shall die by death." And in the Council of Agde, that he is to be anathematized.

Chapter III

Latin source headnote: A cleric lacking administration is not bound to an oath of obedience or to make a writing concerning it.

Pope Leo.

It was [also] read in your letters, [which the same deacons brought,] that brother Atticus [had come to Thessalonica, and that he had also signified his consent by a written profession, so that nothing else could be understood by us concerning him than that what he came to do was of his own choice and spontaneous devotion, and that] he had composed a little charter concerning the pledge of obedience, in which a sign of injury was disclosed. For it had not been necessary that one be bound by writing who was already proving his obedience by the very duty of his voluntary coming. [Hence with lamentations, etc.]

Chapter IV

Latin source headnote: Everyone from a diocese is to obey the bishop.

Pope Clement III.

Blessed Peter commanded all princes of the earth and other men to obey bishops, [to submit their heads, and to exist as their helpers,] [so that all, etc.]

Chapter V

Latin source headnote: One who does not obey canonical statutes incurs the mark of disobedience, that is, infamy.

Innocent III, to the Chapter of Würzburg.

That which the Lord in blessed Peter—(*And below:* [cf. c. 5, On an Excommunicated Cleric, V. 27.])—but he asserted that he had held the fortifications and fortified towns of the church of Würzburg for its utility, lest, if they had perhaps come into alien hands, there would afterwards be no one to liberate them. But since spiritual things are more worthy than temporal things, and obedience is better than sacrifice, and to hearken more than to offer the fat of rams, the Bishop of Hildesheim ought not, for the temporal advantage of the church of Würzburg, to have incurred the mark of disobedience and contradicted apostolic commands. [On the fifth day before the Ides of April, in the second year, 1200.]

Chapter VI

Latin source headnote: The empire does not preside over the priesthood, but is subject to it and is bound to obey it. Or thus: a bishop ought not to be subject to princes, but to preside over them. This is what it says, and it is much capable of being alleged.

The same, to the Most Illustrious Emperor of Constantinople.

With the affection of accustomed kindness we received the letters that the imperial excellence sent to us through our beloved son the Archdeacon of Dyrrachium, a provident and faithful man. Through them we understood that the letters that we transmitted to you through our beloved son I., our chaplain and at that time legate of the Apostolic See, had been presented to your empire and read through.

§ 1. But the imperial sublimity marveled, as you conveyed to us through the same letters, that in our letters we endeavored to rebuke you somewhat, although we remember that what we wrote was written not with a mind to rebuke but rather with the affection of admonishing. But the occasion, not the cause, for this wonder of yours was furnished, as we gathered from the same letters, by your reading that blessed Peter, prince of the Apostles, wrote thus: "Be subject to every human creature for God's sake, whether to the king as preeminent, or to governors as sent by him for the vengeance of malefactors, but the praise of the good."

For the imperial loftiness, wishing through these and other things that it introduced to prefer the empire to the priesthood in dignity and power—concerning which we wonder more reasonably—wished to draw a threefold argument from the aforesaid authority: the first from what is read, "be subject"; the second from what follows, "to the king as preeminent"; the third from what is subsequently added, "for the vengeance of malefactors, but the praise of the good." From the first it presumed that the priesthood is subject; from the second, that the empire is preeminent; from the third, that the emperor received jurisdiction over priests as well as laymen, or indeed even the power of the sword. For since certain priests are good and certain of them exist as malefactors, the one who, according to the Apostle, bears the sword for the vengeance of malefactors but the praise of the good can avenge presumed excesses against offending priests with the avenging sword, since the Apostle does not distinguish between priests and others.

§ 2. But if you had more diligently attended both to the person speaking, those to whom he spoke, and the force of the utterance, you would not thus have expressed the writer's meaning. For the Apostle was writing to his subjects and urging them to the merit of humility. For if, through what he said—"be subject"—he wished to impose the yoke of subjection upon priests and confer the authority of prelacy upon those to whom he admonished them to be subject, it would follow from

this that any slave had also received command over priests, since it is said, “to every human creature.”

But what follows, “to the king as preeminent,” we do not deny that the emperor excels in temporal things only those who receive temporal things from him. But the Pontiff excels in spiritual things, which are more worthy than temporal things by as much as the soul is preferred to the body. Nor was it said simply, “be subject,” but “for God's sake” was added; nor was it written without qualification, “to the preeminent king,” but “as” was interposed, perhaps not without cause. But what follows, “for the vengeance of malefactors, but the praise of the good,” is not to be understood as meaning that the king or emperor received the power of the sword over all, both good and evil, but only over those who, using the sword, are committed to his jurisdiction, according to what the Truth says: “All who take the sword shall perish by the sword.” For no one can or ought to judge another's servant, since, according to the Apostle, a servant stands or falls to his own lord.

For this you also introduced that, although Moses and Aaron were brothers according to the flesh, nevertheless Moses, prince of the people, presided over Aaron by the power of the priesthood, and Jesus his successor received command over priests. King David also was preeminent over the pontiff Abiathar. But although Moses was leader of the people, he was also a priest: he anointed Aaron as priest, and the Prophet, recognizing the priesthood in him, says: “Moses and Aaron among his priests.” But what you wrote concerning Jesus—that is, Joshua—for commending his prelacy ought to be understood more according to the spirit than the letter, because, according to the Apostle, the letter kills but the spirit gives life, for the reason that he expressed the figure of the true Jesus, who led his people into the land of promise. David also, although he held the royal diadem, commanded the priest Abiathar not so much by royal dignity as by prophetic authority. But whatever may once have been the case in the Old Testament, now it is otherwise in the New, since Christ was made a priest forever according to the order of Melchizedek. He offered himself to God the Father as a victim upon the altar of the cross not as king but as priest, through which he redeemed the human race, especially with respect to the one who is successor of the Apostle Peter and vicar of Jesus Christ.

§ 3. But you could rather have understood the prerogative of the priesthood from what was said: not by anyone, but by God; not to a king, but to a priest; not to one descending from royal stock, but from priestly lineage—namely, concerning the priests who were in Anathoth: “Behold, I have established you over nations and kingdoms, that you may uproot and destroy, build and plant.” It was also said in the divine law: “You shall not disparage gods, and you shall not curse the prince of your people,” which law, placing priests before kings, called the former gods and the latter princes.

§ 4. Furthermore, you ought to have known that God made two great lights in the firmament of heaven: the greater light to preside over the day and the lesser light to preside over the night; each great, but one greater. For by the name of heaven the Church is designated, according to what the Truth says: “The kingdom of heaven is like a man who was the father of a household, who in the early morning hired workers into his vineyard.” But by day the spiritual is understood and by night the carnal, according to the prophetic testimony: “Day pours out the word to day, and night announces knowledge to night.” Therefore, for the firmament of heaven—that is, of the universal Church—God made two great lights, that is, he instituted two great dignities, which are pontifical authority and royal power. But the one that presides over days, that is, spiritual things, is greater; the

one that presides over [nights, that is,] carnal things is lesser, so that the difference between pontiffs and kings may be known to be as great as that between the sun and moon.

But if the imperial loftiness prudently attended to these things, it would not cause or permit our venerable brother the Patriarch of Constantinople—a great and honorable member of the Church—to sit at the footstool of its feet on the left side, when other kings and princes, as they ought, reverently rise for their archbishops and bishops and assign them an honorable seat beside themselves. For we believe that your discretion is not ignorant of how much honor the most pious Constantine showed to priests.

§ 5. But although we wrote not by way of rebuke, we could nevertheless reasonably have rebuked, since blessed Paul the Apostle, instructing a bishop, is read to have written to Timothy: "Preach the word; be urgent in season, out of season; reprove, entreat, rebuke in all patience and doctrine." For our mouth ought not to be bound, but ought to be open to all, lest according to the prophetic word we be mute dogs unable to bark. Hence our correction ought not to have been troublesome to you, but rather acceptable, because a father corrects the son whom he loves, and God reproves and chastises those whom he loves. Therefore, we execute the debt of the pastoral office when we entreat, reprove, and rebuke, and endeavor to induce not only others but emperors and kings, in season and out of season, to those things that are pleasing to the divine will.

§ 6. But the sheep of Christ are committed to us in blessed Peter, the Lord saying, "Feed my sheep," not distinguishing between these sheep and others, so that he showed that one who did not recognize Peter and his successors as teachers and shepherds was alien to his sheepfold. Let us omit as most well known that which the Lord said to Peter, and in Peter said to his successors: "Whatever you bind upon earth shall be bound also in the heavens, etc.," excepting nothing, since he said, "whatever."

But we are unwilling to dwell longer upon these things, lest we appear either to contend or to delight in matters of this kind, since, if it is expedient to glory, one ought to glory not in honor but in burden, not in greatness but rather in solicitude, since the Apostle also glories in infirmities. We know that it is written: "Everyone who exalts himself shall be humbled, and he who humbles himself shall be exalted"; and again: "The greater you are, humble yourself in all things"; and elsewhere: "God resists the proud but gives grace to the humble." On this account we place our exaltation in humility and reckon our humility our greatest exaltation. Hence we also write and confess that we are servants not only of God but also of the servants of God, and according to the Apostle we are debtors to the wise as well as the unwise.

§ 7. But whether we decided through our letters to invite the imperial excellence to what is good and useful, whether we suggested to you just and honorable things, let your solicitude discern, since we remember inviting you only to aid directed to the utility of the Church and land of Jerusalem. [Therefore may he inspire, etc.]

Chapter VII

Latin source headnote: One ordained by the Pope is not thereby exempted from the jurisdiction of his bishop.

The same, to the Bishop of Florence.

Through your letters you intimated to us that, when certain subdeacons of the Roman Church obtain prelacies in your diocese for which they are bound to show you obedience, if at any time justice requiring, it should happen that you exercise ecclesiastical discipline against them, alleging the privilege of the subdiaconate they assert that they are not bound by it, as though through an office of the subdiaconate of this kind they were exempted from the obedience that they owe you by reason of the benefice obtained. Concerning this you sought to be taught through the oracle of the Apostolic See whether anyone, through the order of subdiaconate received from the Roman Pontiff, is withdrawn from the reverence due to you. To this we answer you briefly that, although it is fitting that among the others subject to you [special] deference be shown by you, insofar as is appropriate, to those whom apostolic kindness has honored by conferral of that order, nevertheless, through it they are by no means absolved from the obedience that they otherwise owe you. [Given at Rome at Saint Peter's, on the seventh day before the Ides of April, in the ninth year, 1206.]

Chapter VIII

Latin source headnote: When obedience or subjection is at issue, nothing ought to be attempted to the prejudice of the defendant or a possessor who was not cited.

The same, to the Patriarch of Constantinople.

Among the four living creatures that are described in the midst of the throne and around it, the face of an eagle is mentioned by Ezekiel above the four of them, because among the four patriarchal churches—Antioch, Alexandria, Jerusalem, and Constantinople—which are signified by the aforesaid living creatures and which the Apostolic See, having them in its midst, embraces as special daughters, while they are around it like obedient handmaids, Constantinople itself is preeminent after the Apostolic See in excellence of dignity. We aspire to its exaltation the more gladly insofar as, embracing it more closely as a more honorable member of the sacrosanct Roman Church, we know in these times that it needs its aid more greatly, and we arrange more gladly to advance your petitions, since by the Lord's disposition you are known to preside over it, when honorableness does not oppose them and prejudice is not generated against others. For an action of injuries ought not to arise from us, from whom rights are derived to others as from a fountain.

Therefore, although we wish, insofar as we can with God, to defer to your honor and commit your prayers to effect, we nevertheless were unable to hear that petition by which you sought from us that we deign by apostolic authority to annul grants of churches and benefices made by our beloved son P., cardinal-priest of the title of Saint Marcellus and legate of the Apostolic See, when you were present and entirely unconsulted, since he conferred an excessive multitude of churches and delivered them to be possessed by perpetual right without your consent and that of the chapter of the greater church, etc.

Therefore, although on account of the foregoing we were unable to hear your petition according to your desire, nevertheless, wishing to defer to your honor insofar as we can with our honorableness, we have decided to grant your fraternity that those who possess those churches or benefices show you due and devoted obedience, unless perhaps any of those churches had been lawfully exempted from the patriarch's jurisdiction before the capture of the royal city.

But for a twofold reason we decided not to admit the subsequent petition concerning the churches that you sought to be subjected to you, which did not answer to the Patriarch of Constantinople

before the city of Constantinople was captured. For the rationale of law demands that we ordain nothing concerning them to the prejudice of those to whom the same churches are subject, since they have been neither cited nor convicted, nor absent themselves through contumacy. [Providence also dissuaded this from being done at present, lest the Pisans, Venetians, and very many others who have churches of this kind at Constantinople be provoked against the empire at this time, since they are rather to be enticed by blandishments until it is strengthened with immovable solidity. But if you should decide to pursue your right against them at an opportune time, with the Lord as author, we shall cause the fullness of justice concerning them to be furnished to you.]

But concerning the obedience that you similarly sought us to cause to be furnished to you by the archbishop and bishops of the kingdom of Cyprus, we decided to answer you nearly the same as in the preceding petition, since they too had been exempted before your promotion—namely, when the church of Constantinople was disobedient and rebellious—and we ought not to have changed anything concerning their condition in their absence. Nevertheless, we shall not deny you justice when you should decide to seek it. [On your part, etc. Given at Ferentino, on the fourth day before the Nones of August, in the ninth year, 1206.]

Chapter IX

Latin source headnote: Abbots and priests who are diocesan subjects of a bishop can be compelled by ecclesiastical censure to come to his synod and obey him.

The same.

As to what concerning these things—(*And below:* cf. c. 5, On Consanguinity and Affinity, IV. 14.)—likewise, you are to compel by ecclesiastical censures the abbots and priests subject to you by diocesan law, who disdain [when summoned] to come to your synod, to come to that synod and show you due obedience and reverence, provided that in the synod itself you do not decide that anything should be established that might oppose canonical statutes. [To the chaplains, etc. Given at the Lateran, on the second day before the Kalends of January, 1199.]

Chapter X

Latin source headnote: Regular canons disobedient to their prior can be excommunicated by him and, if they are incorrigible, ought to be expelled from the fellowship of the brothers.

The same, to the Abbots of Saint Stephen and Saint Proculus of Bologna.

When in the churches of Saint Victor and Saint John of the Mount—(*And below:*)—we, therefore, attending with diligent solicitude to the reformation of those churches, which, as their sins require, have both been diminished in temporal things and manifoldly collapsed in spiritual things, gave all the canons a firm mandate that they obey their prior in those things that pertain to him. And when all, with only four excepted, harmoniously answered that they wished to obey his admonitions and precepts, the aforesaid four, raising themselves in pride against the prior, although they had corporally furnished an oath concerning the obedience to be shown to their prior, nevertheless, forgetful of the oath furnished and the strict precept, resisted their prior in all things. And when for their contumacy they could not be recalled to due obedience, with justice dictating, the said prior promulgated a sentence of excommunication against them.

Therefore, when the aforesaid canons approached the Apostolic See, having been made more certain of their contumacy through authentic writings from the testimony of many prelates, after receiving from them corporally an oath according to the form of the Church, we caused the benefit of absolution to be imparted to them, commanding them under debt of the oath that, returning to their cloister from which they had departed, they devotedly and humbly obey their prior according to God.

Therefore, being unwilling that the same canons hereafter wander with such unbridled liberty, by apostolic writings we command your discretion that, relying upon our authority and with the subterfuge of any appeal removed, by ecclesiastical censures you compel the aforesaid canons to return to obedience to their prior; and, lest they be able to glory in their contumacy or malice, compel them, if you see it expedient, humbly to take care to furnish the oath concerning obedience to the prior's mandates that, when seeking the benefit of absolution, they had proudly refused. Otherwise, you are entirely to exclude them from the fellowship of their brothers.

Chapter XI

Latin source headnote: The priests and clerics of chapels subject to a cardinalitial title owe the cardinal obedience and the other things discussed here. And, when the title is vacant, the chapter of that church succeeds, unless something is excepted for the good of peace.

Honorius III, to G., Cardinal-Priest, and the Chapter of Saint Lawrence in Damaso.

Having diligently heard the matters proposed before us for the church of Saint Lawrence in Damaso on one side and the chapels subject to it on the other concerning scrutiny, baptism, manual obedience, correction, interdict, excommunication, and other articles, by sentence we decreed that the priests and clerics of those chapels are to show manual obedience, reverence, and every honor to the cardinal who is now in that church and to those who shall be there over time; are to convene at that church at the customary times for celebrating scrutiny, baptism, and chapter; are humbly to receive correction from the cardinal himself; and are inviolably to observe sentences of excommunication, interdict, or suspension that he renders against them and their churches. But when that church is vacant of a cardinal, the aforementioned chaplains and clerics are nevertheless reverently to show all the aforesaid things to that church, with only that excepted which, for the good of peace, we reserve to our providence concerning their correction, excommunication, and suspension.

Chapter XII

Latin source headnote: Although an abbess cannot excommunicate subjects, they are nevertheless bound to obey her.

The same, to the Abbot of Saint Michael in the Diocese of Abradensis.

Our beloved daughter in Christ, the Abbess of Bubrigen., showed by a petition transmitted to us that, when she often suspends her canonesses and the clerics subject to her jurisdiction from office and benefice on account of their disobedience and faults, the same persons, relying upon the fact that the abbess cannot excommunicate them, do not observe a suspension of this kind, on account of which their excesses remain uncorrected. Therefore, we command your discretion that, after prior admonition, by ecclesiastical censure and with appeal removed, you compel the said canonesses and clerics to show the aforesaid abbess due obedience and reverence and to observe her salutary

admonitions and mandates. [Given at Alatri, on the second day of the month of June, in the sixth year of our pontificate, 1222.]

Chapter XIII

Latin source headnote: If a metropolitan exacts an oath from a suffragan beyond the form established by the canon, the suffragan is not bound with respect to what is beyond it.

Gregory IX, to the Patriarch of Grado.

Our beloved sons the Archdeacon and Chapter of Castello brought their complaint to us that, when you exacted from the Bishop of Castello an oath beyond the canonical form that other suffragans have been accustomed to furnish to their metropolitans, they, perceiving that prejudice was generated against their church from this, appealed to the Apostolic See. (*And below:*) Therefore, since it is not fitting that you do to another what you would not wish to be done to you by another, we command that, being content with the canonical form that we receive from our fellow bishops immediately subject to us, under pretext of the oath furnished you exact nothing more from the Bishop of Castello on the ground of any custom, knowing that we have absolved the same bishop from an oath of this kind with respect to the other articles, or rather declared that he is not bound.

Chapter XIV

Latin source headnote: When a bishopric is vacant, the chapter confirms and invalidates elections.

The same, to the Prior of the Friars Preachers and the Archdeacon of Reggio.

When formerly the cause—(*And below:*)—therefore, we command that, although the convent of the monastery of Saint Savior of Messina is by law deprived on this occasion of the power of electing, nevertheless by grace you are to give them by our authority free faculty to elect or postulate, commanding the same persons that, because the church of Messina is presently vacant, they present their election to the Chapter of Messina to be confirmed as shall be lawful, or even invalidated.

Chapter XV

Latin source headnote: One who is greater in order, although received later in the church, is preferred in place and portion. This is what it says according to the true reading.

The same, to the Archpriest of Saint Mary Major in the City.

We establish that priests obtain the first place, deacons the second, subdeacons the third, and so on with the rest in order, even if they are admitted later. And we wish one who is greater in order, even if received afterwards, to be superior in receiving a portion, and those of lesser orders to perform the customary services.

Chapter XVI

Latin source headnote: If a church situated within some archdeaconry is erected as a cathedral, it is exempted from the jurisdiction of the archdeaconry.

The same, to the Archbishop of Kalocsa.

Since an inferior cannot absolve or bind a superior, but a superior regularly binds and absolves an inferior, and it appears sufficiently [unworthy and] discordant that [the greater be subject to the lesser and] a son have power over a parent, we marvel [not a little and are moved] that, when you erected the monastery of Cheur, situated in the archdeaconry of Firmiensis in your diocese, as a cathedral church, [consecrating our venerable brother the Bishop of Sirmium as bishop to the title of that church], the Archdeacon of Firmiensis broke out into such great audacity of temerity that he presumes to exercise jurisdiction over the bishop consecrated there and his church. [Therefore, the same bishop humbly entreated us that, since, while the same archdeacon exercises jurisdiction of this kind over him and the said church, he in a certain manner does not exist as bishop in that church, we deign beneficially to provide for him concerning this. We, therefore, compassionating the same bishop and church with paternal affection and entirely exempting them, with all their rights and appurtenances, from the jurisdiction of that archdeacon,] command that you take care strictly to prohibit the aforesaid archdeacon [on our behalf from presuming hereafter to exercise any jurisdiction over them], from whose jurisdiction we declare the said bishop exempted. You are to take care strictly to prohibit this, provided [prudently] that, if the rights of the Archdeacon of Firmiensis are harmed by this, you make suitable recompense to him within your diocese, where you see it expedient, without prejudice to another's right. [Contradictors, etc. Given at Rieti, on the twelfth day before the Kalends of April, in the fifth year, 1232.]

Textual note: The Latin Library transcription's *provisio* has been corrected to *proviso*, as required by the sentence's construction.

Chapter XVII

Latin source headnote: A single person whose interest is involved will be able to impede a settlement concerning the right of primacy.

The same, to the Archdeacon of Limoges and the Prior of Saint Radegund of Poitiers.

The humble teacher of doctrine—(*And below:*)—we command that you seek the assent of the prelates of the province of Bordeaux present in it, of its cathedral chapters, and also of the Chapter of Bourges concerning the provision that we decided should be made between the Archbishops of Bourges and Bordeaux in the cause of primacy. When this has been obtained, you are solemnly to publish our provision. But if any should be unwilling to furnish consent, suspending the aforesaid publication, you are strictly to command them, if they are prelates, to present themselves personally to our sight, or, if others, through suitable proctors, to prosecute before us the right, if any, that they contend they have, and to make satisfaction to the other party in expenses if they succumb.

Title XXXIV: On Truce and Peace

Chapter I

Latin source headnote: It establishes the times of truces and the penalties of those violating them.

Alexander III, in the Lateran Council.

We command that truces be inviolably observed by all from the fourth day of the week after sunset until the second day of the week at sunrise, [and] from the Advent of the Lord until the octave of

Epiphany, and from Septuagesima until the octave of Easter.

§ 1. But if anyone should presume to break the truces and, after a third admonition, should not make satisfaction, let his bishop declare a sentence of excommunication against him and announce it in writing to the neighboring bishops. Let none of them receive the excommunicated person into communion; rather, let each confirm the written sentence. But if anyone should presume to violate these things, let him lie under peril of his order.

§ 2. And because a threefold cord is broken with difficulty, we command that bishops, having regard only for God and the salvation of the people, with all trepidation set aside, furnish one another mutual counsel and aid for firmly maintaining peace, and not omit this for anyone's love or hatred. But if anyone should be found timid in this work of God, let him incur loss of his own dignity.

Chapter II

Latin source headnote: The persons enumerated here enjoy full security in time of war.

The same.

Moreover, we renew that priests, [clerics], monks, lay brothers, pilgrims, merchants, peasants going and returning and engaged in agriculture, and the animals with which they plow and that carry seed to the field, enjoy suitable security. Nor anyone, etc. (cf. c. 10, On Census, III. 39.)

Title XXXV: On Agreements

Chapter I

Latin source headnote: Agreements, however bare, are to be observed.

From the African Council.

Antigonus, Bishop of Madauros, said: I suffer grave injury, and I believe that your holiness grieves at my insult and reckons it a common injury. When Optantius presented himself, he entered into an agreement with me, and we divided [the congregations; our handwritten instruments and documents are held. Contrary to this agreement he goes about the congregations assigned to me and usurps the peoples, so that they call him father and me stepfather. Bishop Gratus said: This deed is to be grieved at,] so that he may entice to himself there the souls of unlearned peoples contrary to discipline, contrary to evangelical tradition, contrary to the covenants of peace. For if anyone reckoned that this could happen to him, surely no one would ever have sinned against a brother. Hence, either let agreements entered into obtain their firmness, or let the person convened, if he does not restrain himself, experience ecclesiastical discipline. All said: Let peace be preserved; let agreements be kept.

Chapter II

Latin source headnote: An invalid agreement is validated through the superior's consent.

Gregory.

Whenever our assent is awaited in certain agreements, lest the matters conducted come into doubt, ratification ought to solidify them for the security of the parties. [Accordingly, etc.]

Chapter III

Latin source headnote: A judge ought to act studiously so that promises are fulfilled.

The same.

In what manner in Sardinia [lesser or poor persons are oppressed by those who are greater there is attested by the letters of our most reverend brother Dominicus, Bishop of Carthage, and of our most eminent son Innocentius, prefect. So that you may know the matters written to us, we have provided that copies of their letters be transmitted to you. And therefore, because the things that are to be sought are offered,] action is to be taken studiously so that the things that are promised are completed in deed.

Textual note: The Latin Library transcription's *qiu* has been corrected to *qui*.

Chapter IV

Latin source headnote: An agreement by which an ecclesiastical benefice is to be resigned for money is not valid.

Alexander III, to the Bishops of Exeter and Worcester.

When formerly the cleric S., proctor of the Prior and monks of Acra, and the cleric P., for the cause disputed between those monks and the aforesaid P. and his brother—on whose behalf he said that he acted—concerning the church of S. and chapel of L., approached our presence together, they agreed between themselves, though not with us as intermediary, that three marks of silver would be paid to P. for the expenses he had made, and that P. would withdraw from the suit and entirely cease from molestation of the monks. And when they brought this settlement to our hearing and sought that it be confirmed by apostolic authority, we decided not to admit it because it appeared to contain a depraved species of illicit agreement.

But we admonished the aforesaid P. that, both for himself and his brother, he leave the monks in peace and entirely renounce that suit. He, therefore, acquiescing in our admonitions and entirely renouncing that suit for himself and his brother, surrendered into our hands the authentic instruments that he had concerning this. Sending them, namely, to the aforesaid prior and monks, we commanded that, since the aforesaid P. acquiesced in our admonitions concerning this, they too attend to our benign prayers and take care to provide P. and his brother with some benefice from which, by apostolic intercession, they might receive a greater gain than ought to have come to them from that illicit agreement.

But because, as we have learned, the oft-mentioned prior and brothers were unwilling to acquiesce, we, compassionating with paternal piety the labors of those clerics, by apostolic writings command you by way of precept that you admonish the prior and monks to confer and assign a decent and competent benefice to the aforesaid P. and his brother. Otherwise, if it is established to you, as they themselves assert, that the oft-mentioned clerics were violently ejected unjustly and without judicial order from the aforesaid church of Sintonia and chapel of Lintona, you are to cause them to be restored to them, notwithstanding the letters of our confirmation that the aforesaid prior and monks are known to have impetrated from us.

Textual note: The Latin Library transcription's *acqiuevit* has been corrected to *acquievit*.

Chapter V

The same, to the Archbishop of York.

We have learned that certain churches have been granted to clerics under such a tenor that, after their deaths, others named individually should succeed them. But because this is iniquitous and hostile to the sacred canons, and therefore ought not to be tolerated in any way, by apostolic writings we command your fraternity by way of precept that, with contradiction and appeal ceasing, you prohibit successions of this kind as detestable and iniquitous, and decree that they are altogether frivolous and empty.

Chapter VI

Latin source headnote: One who obtained a church through an agreement to increase its pension ought to be deprived of it and otherwise canonically punished.

The same, to the Archbishop of Canterbury and his Suffragans.

Since clerics of your jurisdiction, as we have learned, when persons of churches die, make agreements to pay pensions greater than usual from those churches so that they can more easily obtain the same churches, we wish diligent care and solicitude to be employed for extirpating so detestable a vice. Hence it is that by apostolic writings we command your fraternity by way of precept that, publicly and strictly prohibiting all your clerics from presuming to attempt this, if they should presume to come against your prohibition, with appeal ceasing you are as quickly as possible to despoil them of churches thus obtained, otherwise punishing them with ecclesiastical severity for the excess of so great a presumption. In addition, etc. (cf. c. 11, On Census, III. 39.)

Textual note: The Latin Library transcription's *adhihere* has been corrected to *adhibere*.

Chapter VII

Latin source headnote: If a church, when leasing its property or granting it in fief, adds an agreement to the prejudice of the parochial right of another church, it does not hold, and it is compelled to return to that church whatever it received on this occasion.

Innocent III, in the General Council.

Very many regular and sometimes secular clerics, as we have learned, when they lease houses or grant fiefs, add an agreement to the prejudice of parochial churches that the lessees and feudatories pay tithes to them and choose burial among them. But since this proceeds from the root of avarice, we entirely reprove an agreement of this kind, establishing that whatever was received on occasion of such an agreement be returned to the parochial church.

Textual note: The Latin Library headnote's *eeclesia* has been corrected to *ecclesia*.

Chapter VIII

Latin source headnote: An agreement concerning spiritual things, or one that induces sin, or one that is base, concerning a base thing, or impossible by law or fact, is not valid.

Gregory IX.

The agreements made by you, as we have heard, for obtaining certain spiritual things are of no effect at all, since in matters of this kind every pact and every agreement ought altogether to cease. The same is also to be said concerning others that, if observed, tend toward loss of the soul. For even according to lawful sanctions, a base agreement, or one concerning a base thing or something impossible by law or fact, induces no obligation.

Title XXXVI: On Settlements

Chapter I

Latin source headnote: Instruments and other contrary rights of the parties are taken away by a settlement.

Gregory I, to A., Subdeacon, and Dom., Abbot.

Just as it is grave [and full of reproach that a controversy arisen among persons serving almighty God concerning secular business remain for a long time, so it is praiseworthy and fitting to religious zeal to prefer peace pleasing to God to earthly advantages and, from transitory things, to purchase gains of charity that will always remain. And therefore, because a long contention was drawn out concerning the possessions of Faianum, Nasonianum, and Libinianum, situated in the province of Sicily in the territory of Palermo, between the provosts of the monastery of Saints Maximus and Agatha, which is called Lucuscanum, and, on the other side, the administrators of the hospice established in this city of Rome that is called that of Valerius, but now, with agreements intervening, a salutary decision has proceeded, with God as author, between you, Antonius our subdeacon and provost of the aforementioned hospice, and, on the other side, our most beloved son Dometius, abbot and priest of the aforesaid monastery, it is necessary that every occasion of discord be capable of being forestalled and that the acts conducted be confirmed by intervening authority.]

Accordingly, after the salutary decision made concerning your controversy, we decreed that all instruments, or whatever else exists that could in any manner, whether from prescription of time or otherwise, bring the parties aid from law or any privilege [if, which may it not happen, they wished to come against one another], are to be, just as [also] you seek, void and quashed of every force, and that the page alone of the agreements now made between you obtain valid and perpetual strength. If perchance through carelessness or inexperience something of less firmness has been inserted into it, let it receive the fullest force of cognizance from this authority of ours, [nor to remain, etc. In the month of January, the second indiction, 598.]

Textual note: The Latin Library transcription's *qiua* has been corrected to *quia*.

Chapter II

Latin source headnote: A settlement concerning tithes made with the superior's assent holds.

Alexander III.

We establish that, if a settlement concerning tithes has been made between you and some ecclesiastical person with the assent of his bishop or archbishop, it is to remain ratified and unshaken in perpetuity.

Chapter III

Latin source headnote: If a chapter consented to a settlement that a prelate made in the name of the church, it cannot afterwards dissent.

The same, to the Bishop of Dulmensis.

It happens at times that, although an abbot or prior of some conventual church makes a settlement with an ecclesiastical or secular person concerning matters disputed between them before a delegated or ordinary judge, after letters of ratification from his chapter have been shown, the chapter itself nevertheless endeavors to revoke the same settlement. Hence, because you wished to consult us concerning this, we answer you that, if the abbot or prior had letters of ratification from his chapter, the chapter will not be able to revoke the settlement that he made, if it was observed for some years, as though it had not consented to it.

Chapter IV

Latin source headnote: A settlement cannot be made concerning an ecclesiastical benefice, even with the interposition of an oath.

The same, to the Abbot of Strat. and the Prior of Saint Eusebius.

Established in our presence, the cleric G. showed us by his assertion that, when a controversy arose between himself and the cleric A. concerning the chapel of Stratis, it was finally quieted through a settlement; and, although the settlement itself had been confirmed on each side by pledged faith, the aforesaid A. nevertheless refuses to observe it. Therefore, because settlements of this kind sometimes contain the appearance of simony, and according to the Apostle it is fitting for us to abstain not only from evil but even from the appearance of evil, by apostolic writings we command your devotion by way of precept that, when you have been required on account of this, you summon the parties before your presence and, after the settlement has been revoked as null, hear the cause more diligently, etc.

Chapter V

Latin source headnote: Through a settlement made without the bishop's authority, the prelate, but not the church, can be made censual.

The same, to the Bishop of Chartres.

Hereafter, know that, when someone who is afterwards to have some right in the church at issue, after impetrating letters to an extraordinary judge, settles with his adversary, if the settlement is not contrary to law, it is not to be reproved in any way by the bishop of the place. But a payment made under this pretext without episcopal authority by the church over which he presides does not exceed the life of the one who made the payment.

Chapter VI

Latin source headnote: If a benefice that is held through a settlement is impetrated as vacant by one who was mediator of the settlement, the impetration is not valid. This is what it says with respect to the title.

The same, to the Archbishop of York and the Bishop of Worcester.

We learned from your letters that, when formerly a settlement had long since been made between the clerics R. and A. concerning the church of Vult. and the chapel of Torhec pertaining to that church, before you, brother bishop, who had been delegated as judge, by the authority of G., who at that time was protecting A. in the cause and had been inscribed as a witness, afterwards the same G., coming to our presence and falsely representing himself as a cleric when he had not yet been tonsured as a cleric, impetrated our letters to the Bishop of Durham and the Dean of York, if we remember well, concerning the same church and chapel, with the settlement itself kept silent. But when the same G. and the responsals of the aforesaid R. were finally established in our presence, we, learning the truth concerning these matters from your letters and also considering how the aforesaid G. did not deny that he had taken part in the settlement and had not yet been tonsured when he obtained those letters, decided by apostolic authority to impose silence upon him concerning the aforesaid church and chapel.

Chapter VII

Latin source headnote: A settlement cannot be made concerning an ecclesiastical benefice, but an amicable composition can be made. This is what it says, and it is daily alleged.

The same.

Concerning what you asked—whether a settlement can be made regarding an ecclesiastical benefice brought into litigation—we give the following answer, just as long ago, if we remember well, we gave an answer not dissimilar to another asking: according to the form ascribed by the canons to other settlements, a settlement cannot be made concerning a sacred thing in litigation. For we believe that sacred things being possessed in return for something given, retained, or promised has the appearance of simony. But otherwise, if the litigants compose matters between themselves freely and amicably, we by no means say that this opposes the sacred canons.

Chapter VIII

Latin source headnote: A settlement made concerning the things of a church by a prelate without the superior's consent does not bind his successor.

The same, to the Abbot of Straphor and the Prior of Phe.

Coming to the clemency of the Apostolic See, our beloved son Master G. of Favill. showed us by his intimation that the monks of Marmoutier cultivate lands in the parish of Saint M. of Marchia, and their tenants receive from that church all ecclesiastical sacraments, both necessary and voluntary, and nevertheless they refuse to pay to that church the tithes established by the canons. But they pay it a third part of the crops and presume to retain two parts for themselves; and of the other minor tithes, such as the offspring of animals and fruits of gardens, they are not ashamed to furnish nothing at all.

But they reckon that they can protect themselves in this by pretext of a certain settlement made between the aforesaid monks and a certain priest, predecessor of the aforementioned G., namely, in such a way that from two ploughlands of land that the monks hold in their demesne, they pay only a third part of the tithes [of the crops], retaining the rest for themselves. Thus it happens that, taking from this an occasion for acting maliciously, the monks convert into their demesne, more astutely than providently, estates devolved to them from a failure of cultivators, and aggregate four or perhaps more ploughlands to the two, furnishing tithes from them no differently than they would have

furnished from the two, although according to the tenor of the settlement they would be bound to pay complete tithes from them.

Therefore, since it is fitting for us to provide for churches lest their rights appear to perish for anyone, by apostolic writings we command your fraternity that, when you have been required concerning this, after both parties have been summoned before your presence, you inquire more diligently into the truth of the matter. Unless the aforesaid monks plainly produce before you a privilege granted to them concerning this by [the clemency of] the Apostolic See, or unless the aforesaid monks show that the prescribed settlement was confirmed by apostolic authority, since otherwise it appears to have been made between persons [thus] rather than between churches, and since we do not permit agreements conducted among some to harm others, with every delay and appeal removed, you are to compel them and [their] cultivators with every strictness to furnish perpetually every year to the church of Saint Mary of Marturen. all the tithes [in their entirety] arising from any things whatsoever, completely and without [any] diminution, and [also] to restore to the same church a just valuation of those tithes that they had unlawfully retained.

But if, according to the matters proposed to us, it should appear to your discretion in judgment that the aforesaid monks can justly be pressed only to furnishing a third part of the tithes, then, with appeal removed, by apostolic authority you are to compel the oft-mentioned monks to furnish to the aforementioned church the third part as tithes of all things that the canons have decreed are to be tithed.

Chapter IX

Latin source headnote: Just as a settlement cannot be made concerning the right of presentation, so one cannot be made concerning what is annexed to it, so that a person withdraws from litigation when some temporal thing intervenes.

Lucius III, to the Bishop of Ormensis.

Moreover, you asked whether, when a question has arisen between laymen and religious men concerning presentation to some church, a settlement is made between them in such a way that the layman obtains the presentation but the religious men receive a new or greater portion in the church in which they had previously been accustomed to have none or a lesser one, a settlement of this kind holds. Therefore, since the agreement itself deservedly appears simoniacal, we answer that it does not hold by law, nor ought the religious men to obtain any advantage from it.

Chapter X

Latin source headnote: It is not lawful to make a settlement concerning spiritual subjection.

Celestine III.

Moreover, in the fourth place this question arose: a certain cell wished to be exempted from the subjection by which it was bound to the mother house. And when the cause was proceeding in due contest, the brothers of that cell, confessing at law that they had formerly been subject to that house, reported that a question had long ago been moved concerning this subjection and quieted by a settlement—namely, to the extent that, by rendering a certain annual payment to the mother church,

the brothers of the aforementioned little cell were entirely exempted from subjection to the principal house.

But, on the other side, the prior of the greater house alleged two things together: first, that, since they had confessed that they had long been subject to that house and had not been exempted before that settlement, it was established that they had been rebels by the very fact that, before the settlement and exception, they contended that they had been withdrawn from its jurisdiction, nor could the subsequent settlement release them from so great a crime of disobedience. The prior also consequently proposed for the greater church that it was not lawful to make a settlement concerning spiritual subjection contrary to the vow of profession. We answer, therefore, that a sentence ought to proceed against them from the aforesaid confession of the brothers of the cell, especially since that settlement—although it could not be clearly established to us concerning what the cell was determinately bound to render—is thought to have contained simoniacal iniquity.

Chapter XI

Latin source headnote: A judge can and ought to interpose himself for making a settlement between the parties, except in cases in which the laws do not admit this, as concerning matrimony. This is what it says.

Honorius III, to I., Cardinal-Priest of the Title of Saint Praxedes.

On your part it was proposed before us that certain Greeks furtively received sacred orders from bishops not their own; certain excommunicated persons also celebrate in churches under interdict and, adhering pertinaciously to Greek rites, are willing in no respect to obey Latin prelates. Furthermore, certain Greek and Latin bishops perform consecrations in the bishoprics of others and receive tithes in them to the prejudice and grievance of the bishops of those places, although the bishops of the Greeks had been accustomed neither to receive tithes nor to celebrate consecrations of this kind. In addition, Greek laymen do not fear to put away their wives according to the movement of their own will and bring in others over them, and to work on Sundays and feast days just as on ordinary days.

Moreover, certain barons and knights, both Latin and Greek, detaining contrary to justice abbeys and other churches together with their men and other goods, do not pay tithes and defend in their error others who refuse to pay; and, if a sentence of excommunication is rendered against them for these or other excesses, they hold it cheap, to the peril of their souls and scandal of others. Hence you desire to be taught by us what is to be done by you in all the aforesaid matters and how the Archdeacon of Neoportensis is to be punished, who did not fear in fact to grant to certain persons license to go with merchandise to Alexandria contrary to the statute of the General Council.

We therefore answer your discretion briefly that, since canonical and civil laws have been issued concerning almost all the articles noted above, you are to proceed in these matters, when necessary, according to canonical and lawful sanctions. You will also be able to interpose your part toward composing matters and at times detract something from severity, insofar as, after the condition of the empire and the multitude of transgressors have been weighed with provident deliberation, you see it to be expedient—except, of course, in cases that do not admit the remedy of composition or dispensation, such as the sacrament of marriage. Since it exists not only among Latins and Greeks

but also among believers and unbelievers, it will not be lawful to depart from canonical severity concerning it.

But in those matters concerning which no law is found expressed, you are to proceed with equity preserved, always inclining toward the more humane part, especially on account of the still weak condition of the empire, according as you see persons and causes, places and times demand.

Title XXXVII: On Pleading

Chapter I

Latin source headnote: A cleric in sacred orders, or one in minor orders who has a benefice, ought not to plead in a secular forum except for himself, his church, or miserable persons.

From the Lateran Council.

Clerics in the subdiaconate and above, [and] also in minor orders if they are sustained by ecclesiastical stipends, are not to presume to become advocates in secular business before a secular judge, unless they are pursuing their own cause or that of their church, or perhaps acting for miserable persons who cannot administer their own causes. [But neither procurations, etc.]

Chapter II

Latin source headnote: Regular canons, like monks, cannot plead except for the utility of the church or their monastery and at the abbot's command.

Innocent III, to the Archbishop of Compostela.

On your part it was proposed before us that certain regular canons, perhaps so that they may be able to demonstrate themselves learned in law and have material for wandering outside the cloister, presume to exercise the office of advocate not only in ecclesiastical but also in forensic causes. And when it is objected against them that, according to canonical sanctions, they ought not to be undertakers or executors even of forensic or ecclesiastical business unless perhaps the utility of the monastery demands it, with the abbot nevertheless commanding, they propose, to excuse their insolence, that the chapter through which the aforesaid things appear to be prohibited manifestly speaks concerning monks, not regular canons. Hence you wished to consult us whether such persons are to be admitted to advocacy. To this we answer your consultation in this manner: we believe that, with respect to the aforesaid matters, the same judgment concerning regular canons as concerning monks is to be observed, although monks are specially expressed in the canon. [Given at Rome at Saint Peter's, on the Ides of March, in the ninth year, 1206.]

Chapter III

Latin source headnote: It summarizes itself.

Gregory IX.

Since it is the office of a priest to harm no one but to wish to benefit everyone, it is lawful for him to plead only for himself, his church, or, if necessity presses, persons connected to him or miserable persons. (*And below:*) But a cleric who presumes to be advocate or proctor for outsiders against the

church from which he obtains a benefice can, as an ungrateful person, especially if he is a cleric of the same church, be despoiled of a benefice of this kind.

Title XXXVIII: On Proctors

Chapter I

Latin source headnote: No one is heard as another's proctor unless he has a mandate lawfully made.

Gregory the Great to Maximus, Bishop of Salona.

We had indeed caused other [writings to be sent to your fraternity before, but at the time when we wished to release your men whom you sent to us.] We have learned that you wrote to certain of our men that you had not then sent the aforesaid men for the case, and therefore that the things done with them ought not to stand; but Thomas also [the defender of your church] stated that this had been said to him orally by you. For this reason we have now judged that not even the bearers of the present letters ought to be trusted, lest the same thing likewise be said concerning them afterward. Therefore, because this has forewarned us that we ought to be more cautious, if you wish to plead the case, send [henceforth] a person instructed in it, with a mandate lawfully made, confirmed by your subscriptions and those of the priests or deacons and witnesses, and with the proceedings recorded according to custom, so that whatever has been transacted with him may stand in law. [For we not only, etc.]

Chapter II

Latin source headnote: A sentence, even one condemning a person in costs, pronounced against an absentee lawfully excused through a messenger for a probable cause, is invalid. This states the rule according to its true meaning.

Alexander III.

We have received the complaint of the cleric A. that, although our venerable brother the Bishop of Worcester had undertaken, by our mandate, to terminate with the due conclusion the case which is pending between him and the Bishop of Salisbury concerning the church of Bribec., nevertheless, because that cleric could not present himself to him on the appointed date, inasmuch as he was detained by illness—as he was prepared to prove through a certain priest and deacon whom he had sent into the presence of that bishop—the bishop condemned the same A. to restore the expenses which R., Archdeacon of Lisieux, had incurred by coming then for that case on that date. We therefore command and enjoin upon your discretion that, if the aforesaid bishop has not absolved the same A. from the aforesaid sentence in accordance with our mandate, you, after inquiring more diligently into the truth of the matter, if it is established to you that the Bishop of Worcester condemned the aforesaid A. to restore the expenses for no other reasonable cause than merely because, while detained by illness, he did not come into his presence on the appointed date—since no one can be compelled, unless he wishes, to appoint a proctor in serious cases, and since he sent a priest and a deacon to prove his illness—are not to delay in absolving him from the same sentence by our authority, the remedy of appeal being removed.

Chapter III

Latin source headnote: A sentence pronounced with a proctor who has been revoked and informed of this does not prejudice the principal. This states the rule according to the common understanding.

Clement III.

Textual note: The Latin Library transcription's *quadum* and *quibusdum* have been corrected to *quadam* and *quibusdam*.

We have received from the representation of our beloved son I., Archdeacon of Séez, that, when a controversy had arisen between him and Master G. de Sang. concerning a certain prebend of the church of Lisieux which is called de Pomeria, G. of Tortona, presenting himself as a proctor of that archdeacon appointed for that case, opposed the same master, who had come to the Apostolic See on this account, with certain letters of ratification, as he said. But when some progress had been made in cognizance of the case, although the aforesaid G. had been expressly forbidden by that same archdeacon, his principal, in the presence and with the assistance of two clerics, to undertake cognizance of the case and to use his letters in court for undertaking the trial, he nevertheless proceeded in that case and, as is said, received an adverse sentence. But because one of the aforesaid clerics is said to have died, [we nevertheless,] considering that the same G. ought not to have proceeded, contrary to the prohibition of the archdeacon himself, to undertake the trial of his case, command your discretion by apostolic writings that, if, as the account stated, the foregoing is established by the oath of the archdeacon himself and of the surviving cleric—namely, that the same archdeacon expressly forbade the said proctor to undertake the determination of that controversy or in any way to use his letters of ratification in court for undertaking the trial—you, notwithstanding the sentence pronounced against him, are to cause possession of the aforesaid prebend, together with the fruits received from it, by whomsoever it may be detained, to be restored by our authority to that archdeacon, provided that no other canonical obstacle stands against his restitution, the obstacle of contradiction and appeal being removed. Once restitution has been made, if the archdeacon himself can prove his canonical institution, you are to decree, as shall be just, that it remain ratified and inviolate, appeal being set aside.

Chapter IV

Latin source headnote: A rescript obtained concerning subsequent judicial proceedings by a proctor who has been revoked and informed of this is invalid, as is a proceeding or sentence issued through him, if the revocation reached the opponent. This states the rule according to the gloss.

Innocent III to the Bishops of Chalon and Catalaun.

Our venerable brother the Bishop of Toul, appearing in our presence, has tearfully complained that, when formerly, in order to conduct the case pending between himself and the dean of Toul of good memory concerning dilapidation, excommunication, perjury, and certain other crimes, he appointed the priests T. and G. as proctors and arranged for them to be sent to the Apostolic See, after he subsequently began to waver concerning their fidelity, he revoked within a short space of time the mandate which he had given them. But they, although they had received the letters revoking the mandate, nevertheless proceeded in the business and, presenting themselves as proctors, entered into litigation with [his] adversary, namely Geoffrey, Archdeacon of Toul; thereafter, together with

him, they obtained our letters to our beloved son G., Archdeacon of Paris, and his colleagues, to the prejudice of that bishop.

Although their citation had not been presented to that bishop, nevertheless, when it had come to his knowledge that the case pending between them and the said dean and archdeacon had been committed to them, he hastened into their presence. And when the aforesaid bishop, after much insistence, had obtained a copy of our rescript and was carefully examining its tenor with prudent men, greatly wondering that the above-mentioned priests had obtained letters of this kind as proctors, and requested an adjournment from those judges in order to prove that they were false proctors, they, regarding the exception interposed as useless and superfluous, refused to grant him a delay for proving it. For this reason that bishop had recourse to the benefit of appeal and withdrew from the presence of those judges while appealing. But they, paying no deference to the appeal, presumed to proceed in that business and also, although issue had not been joined and the order of law had been passed over, to receive witnesses against that bishop, [and,] removing him from the church of Toul by sentence, [contrary to the form of our mandate, granted the chapter of Toul free power to elect a pontiff for itself. But when the said bishop and P. the archdeacon had recently come into our presence on this account and had litigated before us for some time concerning the proceedings of those judges, that bishop produced thirteen witnesses—certain abbots and monks of the Black and White Orders and certain secular clerics. When they had been diligently examined, it appeared clearly from their depositions that, when the above-mentioned bishop requested an adjournment to prove the aforesaid exception, the aforementioned judges denied it to him, and that, although that bishop appealed to the Apostolic See on this account, they nevertheless proceeded in the business after the appeal had been interposed to us.]

We, however, although we could scarcely give credence to the assertion that the often-mentioned judges, being learned, provident, and honourable men, had proceeded in the manner stated—especially since, in the report which they transmitted into our presence, they made no mention of an exception of this kind having been interposed—nevertheless, because the bishop gave us full proof concerning the things alleged through religious, provident, and honourable men, of whom it is not likely that, forgetful of their salvation and in contempt of the sanctity of their oath, they bore false witness; considering also that the exception of a false proctor may be raised not only before sentence but even afterward, in accordance with canonical and lawful enactments, since, when it has been proved, the trial is regarded as null and the controversy as of no moment, we have judged that the proceeding of the aforesaid judges must be annulled by sentence, with the counsel of our brothers, [restoring the business to that state, etc. Given at Rome, at Saint Peter's, on the Kalends of February, in the ninth year, 1207.]

Chapter V

Latin source headnote: If proceedings for adultery are brought before a secular judge for the legal penalty, a proctor does not intervene; it is otherwise if they are brought before an ecclesiastical judge for separation.

The same to the Bishop of Brescia.

Textual note: The Latin Library transcription's *ecclestiastico* has been corrected to *ecclesiastico*.

Of your fraternity (*And below:* [cf. c. 10, On Him Who Has Known His Consanguineous Wife, IV.13.]) We respond to your consultation in this way: if a husband accuses his wife of the crime of adultery before a secular judge so that the lawful penalty may be inflicted, because he must then undertake the bond of formal inscription and bind himself to the penalty of retaliation, he must accuse her in person, being personally present, and not through a proctor. But if a husband wishes to accuse his wife of adultery before an ecclesiastical judge so that he may withdraw from cohabitation with her, because then, even if perhaps he must make a formal inscription in order to designate in writing the name, place, and time and all the things comprised in the civil law, he nevertheless ought not in any way to bind himself to retaliation—lest perhaps, even when he has failed in proof, he attain the effect of his intention—it can be permitted, if necessity shall demand it, that he accuse through a proctor, since an accusation of this kind, even though it is made concerning a crime, is nevertheless not criminal but is, as it were, mixed between civil and criminal, although proceedings are conducted more securely in the presence of the principal persons. [You asked, etc. (cf. c. 25, On Betrothals, IV.1). Given at Rome, etc., 1206.]

Chapter VI

Latin source headnote: One who has conducted a case by mandate of the principal recovers from him the expenses incurred on that account.

The same.

Textual note: The Latin Library transcription's *minoris vel sanioris partis* has been corrected from Friedberg's *maioris vel sanioris partis* ("the greater or sounder part").

When the proctors of both parties had come into our presence for the case pending between our beloved sons G. and F., archdeacons of the church of Chalon, [we granted them our beloved son G., Cardinal Deacon of Saint Adrian, as auditor. Before him the proctor of the Archdeacon F. alleged that, when he formerly came to the Apostolic See on account of various burdens which his adversaries were inflicting upon the church of Chalon, he obtained letters to our beloved sons the Abbot of Saint Martin, the cantor of Autun, and the Archdeacon of Flavigny, that they should compel the said Archdeacon G. by canonical coercion to cease from molesting the church of Chalon and the men of a certain obedience belonging to it, which is called Potestas Boiaci, and should compel him to render due satisfaction to that church for the injuries inflicted. And when the judges wished to proceed in the case according to the apostolic mandate, the adverse party appealed to the Apostolic See in order to evade the trial. He added also] that he had obtained letters of confirmation from Pope Celestine of good memory, our predecessor, concerning certain statutes of [that] church established with the common assent of the chapter, through the nonobservance of which the church [itself] was being defrauded of its due service. [Although that predecessor of ours had, at the request of that archdeacon, commanded our venerable brother the Bishop of Autun to cause them to be observed, he nevertheless sent his letters to the chapter of Chalon only once concerning their observance and proceeded no further in the matter.] That proctor therefore sought, on behalf of the aforesaid archdeacon, that the [former] case be committed, that the aforesaid statutes be confirmed, and that those things which he had been compelled to expend for the utility of that church be restored to him.

[But the proctor of the other party answered to the contrary that, when the said Archdeacon F., etc. (cf. c. 27, On the Sentence of Excommunication, V.39). But he, coming to the Apostolic See,

confessed that he had laid violent hands upon a cleric; suppressing, however, the fact that he had violated the immunity of a church, he obtained letters concerning his absolution. Nevertheless he remained under excommunication, since he had kept silent about one of the causes for which he had been excommunicated. Hence he said that he could neither stand in court nor appoint a proctor, especially since the man to whom he had entrusted the conduct of his case was held bound by the same sentence for a similar offence. He also alleged that the things which he had obtained from the Apostolic See while placed under excommunication lacked force. Although, for this reason, the said Archdeacon G. was not bound to answer him unless he had first obtained the benefit of absolution, nevertheless he had presented himself before the said judges and had shown through the letters of our venerable brother the bishop and our beloved son the dean of that church that neither he had any dispute against that church nor the church against him, and that the letters which his adversary had obtained from the Apostolic See had not been obtained with the will of the chapter. Therefore, when the next day assigned to them arrived, and the parties were asked whether, despite the chapter's opposition, the said Archdeacon F. should be admitted on behalf of the church of Chalon against the same Archdeacon G., G. himself appealed to the Apostolic See because of his suspicion of the judges. But to the allegations concerning observance of the customs of the church, he answered that, when the aforesaid bishop had commanded the said dean and chapter to observe the aforesaid customs, they answered that they would observe them more willingly were the poverty of the church not an impediment, adding that they should report the condition of the church of Chalon to the Apostolic See by their letters. From these matters he therefore concluded both that the expenses incurred by the said Archdeacon F. ought not to be restored to him, since he had come to the Apostolic See rather in order to be released from the bond of excommunication, and that he ought not to be heard concerning confirmation of the customs of the church, since he could not show letters of procuration, but rather the proctor himself had been appointed by the chapter. For this reason he urgently sought that the governance of the church be committed to the said bishop and dean in such a way that whatever they should establish with the greater and sounder part of the chapter, both concerning the institution of canons and concerning other matters pertaining to the governance of that church, should be inviolably observed notwithstanding the contradiction of a few, and notwithstanding the letters sent to the said Bishop of Autun concerning observance of the aforesaid customs. He sought also that the said Archdeacon F. be declared excommunicated, since he had neither satisfied the person injured nor made any mention of the violation of the immunity of the church. But on behalf of the aforesaid Archdeacon F. it was answered to the objections in this way: although he had been accused concerning the violent laying-on of hands, only entry into the church had been forbidden him; but afterward, coming to the Apostolic See, he had been absolved without any contradiction.]

We therefore, committing that case to your examination, command your discretion by apostolic writings that [if to you, etc. (cf. c. 27, On the Sentence of Excommunication, V.39).] As [for] the aforesaid statutes, if you find that they were made without any depravity with the assent of the greater or sounder part of the chapter, and the means of the church permit it, you are to cause them to be inviolably observed. [In other matters you are to commit the governance of the church by apostolic authority to the aforesaid bishop and dean, so that whatever they, together with the greater part of the chapter, canonically judge ought to be established, both concerning the institution of canons and concerning other matters, shall have firm effect notwithstanding the contradiction or appeal of a few.] But you are to cause the expenses to be restored to the aforesaid archdeacon if he

can lawfully prove that he undertook the advancement of the aforesaid business by mandate of the chapter and came to the Apostolic See on that account. [Let no one by letters, etc. Given, etc., 1198.]

Chapter VII

Latin source headnote: A university of scholars also can appoint a proctor to sue and defend.

The same to the Scholars of Paris.

Because in cases brought against you and on your behalf your university sometimes cannot conveniently be present to sue and answer, you have petitioned us that, with our permission, you might be allowed to appoint a proctor for this. Therefore, although by the common law you are able to do this, nevertheless, by authority of the present letters, we grant you the power of appointing a proctor in these matters.

Chapter VIII

Latin source headnote: If one cited for the whole case appoints a proctor whom he afterward revokes, proceedings may nevertheless be taken against him, insofar as the state of the case permits, without another citation. This states the rule as to its meaning.

Honorius III to the Bishop of Idanha.

Textual note: The Latin Library transcription's *proccessibus* and *limitatone* have been corrected to Friedberg's *processibus* and *limitatione*.

After the things alleged before us by the proctors of the parties concerning the proceedings of John, canon of Coimbra, Bartholomew, canon of Idanha, and the Dean of Ciudad Rodrigo and their co-judges, our delegates, in the case pending between you and our venerable brother the Bishop of Coimbra concerning the boundary of the dioceses and other matters, had been heard and understood, you should know that, with the assent of our brothers, we adjudged those proceedings and whatever followed from them or because of them void, notwithstanding the letters which the aforesaid Bishop of Coimbra sent concerning revocation of the mandate of his proctor, since before letters of this kind reached him the matter had been concluded on both sides concerning those proceedings. But we judged that the aforesaid Bishop of Coimbra—who had caused the entire business to be called up for examination by the Apostolic See and afterward, not without contempt of us and loss to you, revoked the mandate given to his proctor—was to be condemned to you for the expenses which you incurred from the time when the revocatory letters reached his proctor and which you will also incur until the day on which that bishop presents himself before us, either in person or through a suitable proctor, to proceed lawfully in the principal business and in matters connected with it. Therefore, lest there be any doubt concerning these matters, we have judged that these letters should be granted.

Chapter IX

Latin source headnote: A bishop's proctor sues and defends the causes of the bishopric, although he was not appointed under the name of syndic or agent.

The same to M. and R., Canons of Modena.

Your petition presented to us contained that, when our venerable brother the Bishop of Modena, being about to depart for Livonia, appointed you as his general vicars and proctors, whenever you

wish to sue the detainers of the goods of the bishop of Modena or to answer those suing against him, it is frequently objected that you cannot do this because it is not expressed in the instrument of the vicariate or procuration of this kind that the bishop himself appointed you as syndics or agents. You therefore humbly petitioned that, since the utility of the aforesaid bishopric is frequently impeded through exceptions of this kind, we would deign to make salutary provision in this matter. We therefore, knowing clearly from the tenor of that instrument that the intention of the bishop himself was to give you free power to sue and answer on behalf of the bishop himself, wholly reject an exception of this kind.

Chapter X

Latin source headnote: A judge ought to ensure, especially in a matrimonial case, that one appointing a proctor enjoys full liberty.

Gregory IX to the nobleman Ubaldo, a citizen of Pisa.

Coming to the Apostolic See (*And below:*) We command that you restore the noblewoman D., who is held under your power, to full liberty, causing her to be conducted safely to the castle of Massa in the diocese of Lucca, so that, being free there, she may freely appoint a proctor who may pursue her justice before us. You, therefore, are to send into our presence a suitable proctor concerning the betrothal which is alleged to have been contracted between your daughter and the son of that noblewoman, who is to have full power to sue and answer.

Chapter XI

Latin source headnote: If a general proctor is denied an adjournment for consulting his principal, who is absent for a probable cause, the proctor can appeal.

The same to the Archbishop of Canterbury.

Our beloved son Master L., rector of the church of Auna, showed in a petition transmitted to us that, when the priest R. obtained our letters to judges against him concerning that same church while he was staying at Bologna for the purpose of study, and the same rector had been cited by authority of those letters by the judges themselves, his general proctor for transacting all his business appealed to our hearing on his behalf because they refused to grant him a suitable period within which he might consult the rector himself as to whether he ought to contest or yield the claim. Therefore we command that, if it is so, after revoking as void, etc.

Chapter XII

Latin source headnote: If a defendant withdraws from court, leaving a proctor only for suing, he is contumacious and is condemned in costs.

The same to the Bishop of Lisieux.

When H., Prior of Séez, and the layman T. had appeared in our presence, we granted them our beloved son O., our subdeacon, as auditor concerning the case pending between them over a certain sum of money. (*And below:*) Because the prior, after receiving the libel concerning the money in which the said T. said that he was bound to him in his wife's name, withdrew without leave, leaving a certain proctor merely to sue, and because the auditor himself did not see that person to be sufficient

under the procuratorial mandate given to him to defend the prior, regarding the prior as contumacious on this account, after making a prior assessment he condemned him to the aforesaid T. in one mark sterling for expenses. (*And below:*) But we, desiring to put an end to the litigation and approving what is known to have been done by the aforesaid auditor, command that, when the parties have been summoned, etc.

Chapter XIII

Latin source headnote: A judicial proceeding conducted with a revoked proctor stands if the judge and the adversary were ignorant of the revocation. This states the rule according to the common and true understanding.

The same.

When the mandate of a proctor has been revoked by the principal after joinder of issue, if this was done without the knowledge of the judge or the adversary, the judicial proceeding which that person afterward conducted as though he were proctor ought to be ratified.

Chapter XIV

Latin source headnote: A son under paternal power can be a proctor in court, even for future litigation; and a proctor appointed jointly with several others, each for the whole, is preferred if he has first taken charge of the business; it is otherwise if he was appointed at a different time. Likewise, a proctor ought to appeal from a sentence unless he is excused by a cause; in that case he ought to notify the principal of the sentence, but he is not bound to prosecute the appeal.

The same.

The judge did not proceed unjustly when he admitted as proctor a son under paternal power, although appointed for future controversies, who, although appointed at the same time as others, nevertheless first undertook the office of procuration. This could not have occurred in the case of proctors appointed at different times, since upon the appointment of the later one, the procuration of the former would have been revoked. He also could and ought to have appealed to our hearing from the sentence insofar as it was pronounced against him, or, if a just cause excused him, at least to have notified the principal so that he might have recourse to the benefit of appeal, although the proctor was not bound to prosecute the appeal against his will.

Chapter XV

Latin source headnote: The proctor of a community whose magistrates and sworn officers are excommunicated is not excluded from obtaining a rescript, unless they are named in the instrument of procuration, or it was made by their authority, or they were knowingly admitted to it. This states the rule and is a noteworthy and subtle decision.

The same.

We were consulted whether a proctor appointed by some community to obtain a rescript ought to be excluded from obtaining it on the ground that the magistrates and sworn officers through whom that community was governed were bound by a sentence of excommunication at the time when the office of procuration was enjoined. We answer in this way: unless those persons were named in the letters

of procuration, or the appointment of the proctor was otherwise made by their authority, or the community, knowing them to be such, appointed that proctor together with them, a proctor of this kind is not to be excluded.

Title XXXIX: On the Syndic

Chapter I

Latin source headnote: Religious ought to have a syndic who sues and defends the monastery's cases, even, if necessary, with a salary fixed for him.

Pope Gregory to the Subdeacon, Defender of Sicily.

Just as it ought to belong to our solicitude to remove monks from forensic litigation [so that they may attend piously and diligently to the divine ministries], so it is necessary for us to order by our provision how their business ought to be arranged, [lest the mind, distracted by the cares of various cases, waste away and, enervated, grow sluggish in celebrating its accustomed work. John, the abbot who bears the present letters, asserts that he has very many affairs of his monastery.] For this reason we command you that you ought to speak with Faustus, [who had been chancellor of the magnificent Roman, the former praetor,] and, if he is willing, upon the fixing of a salary you ought to entrust to him generally the affairs of that monastery. For it is expedient that the servants of God should, at a small cost, be free from the tumult of lawsuits.

Title XL: On Things Done by Force or Because of Fear

Chapter I

Latin source headnote: If anyone professes religious life through fear of death and afterward does not ratify it, she can leave and contract marriage; it is otherwise if she had freely consented either at the beginning or afterward.

Alexander III to the Bishop of Huesca and the Prior of Saint Mary of Zaragoza.

It has been brought to our hearing that, when a certain noble and powerful man named Atorelia held his wife M. in suspicion, his knights, taking her to a certain wood at his command, wished to kill her with a drawn sword; but at last, moved by pity, they spared her upon this condition, that she should assume the monastic habit in the monastery of Colobris. When her husband heard this, because her life had been spared, he bore it very ill, but nevertheless afterward acquiesced. And thus it happened that he brought two bishops, those of Zaragoza and Tarazona, to that monastery so that they might bless her and impose the veil upon her. But the bishops, ignorant of the affair, having been sent by the husband to impose the veil upon her, and regarding the change in her life as suspicious because she was young and had a little son, met with her separately. She disclosed the affair to them in order, stating that she was entering the monastery from fear of death and not with a good intention, and added nevertheless that she would leave it whenever she could. But the bishops, then fearing for her death and unwilling to disclose what they had heard from her, one of the bishops—namely, that of Tarazona—in order that he might appear to satisfy the tyranny of that husband, pretended to impose the veil upon the woman. At last, however, when the husband had been removed from their midst, the aforesaid woman, leaving the monastery, took another husband. At the insistence of the sisters,

the Bishop of Calahorra bound them with the bond of excommunication and placed all his land under interdict, being wholly ignorant of how the matter had proceeded; our venerable brother the Archbishop of Tarragona afterward confirmed that sentence.

We therefore, trusting in your prudence and probity, have judged that this case should be committed to your experience and terminated with a due conclusion. Accordingly, by apostolic writings we command your discretion, by way of precept, that you absolve the aforesaid woman and man from the bond of excommunication, after receiving an oath that they ought to abide by your mandate; then, summoning both the woman and the prioress and nuns of the aforesaid monastery before you, you are to hear the case most diligently and terminate it with a canonical conclusion. But if it is lawfully proved that the aforesaid woman did not enter religious life through fear of death, or that she afterward ratified what she had done, you are to compel her by ecclesiastical censure to return to the monastery and resume the habit which she laid aside. [Given at Benevento.]

Chapter II

Latin source headnote: One who renounces his benefice through fear of losing his patrimony can reclaim it.

The same to the Bishop of Worcester.

The Abbot of Saint Edmund, from whom R., the bearer of the present letters, is known to hold his patrimony, sent his knights and burgesses to his house, as we have received, so that they should expel him from his house and all his possession unless he utterly abjured his church. When the same R., compelled in this way, had done so, the abbot granted the aforesaid church to another. Therefore, because things done through fear and force ought by law to be revoked as void, we command your fraternity by apostolic writings that you restore all things with their integrity to the aforesaid R., [if it is established to be so].

Chapter III

Latin source headnote: One who, from terror of laymen, renounces an election made of himself can be placed over the governance to which he had been elected, if the renunciation was not confirmed by oath or pledged faith.

Clement III.

It has reached our ears, as you have reported, that a certain man elected as pleban of a certain church which pertains to your disposition renounced, from terror of the laymen, the election which had been unanimously celebrated concerning him by the clerics, with one exception; but the one who dissented emitted a declaration of appeal to the Apostolic See before the election. You therefore wished to consult whether a renunciation made from terror of laymen prevents the person who had previously been elected from being assumed to the governance of the aforesaid church, and whether the appeal of the one who swore that he would not elect and appealed lest others elect has force. Let it therefore become known to your discretion through the present letters that a renunciation made from terror of laymen, unless perhaps it was confirmed by an oath or by pledged faith, does not prevent the one who renounced the church from being placed over that same church to whose governance he had previously been elected. Nor, because of the contradiction or appeal of one who

publicly confessed that he swore he would not elect, is the election canonically celebrated by the others to be annulled. [Concerning this, etc. (cf. c. 12, On Election, I.6).]

Chapter IV

Latin source headnote: One who, through fear which could have befallen a steadfast man, swore to renounce his benefice and renounced it can reclaim it.

Innocent III to the Dean and Subdeacon of Lincoln.

It has reached our hearing, as our beloved son the Master of Chevell. has reported, that, when he had canonically obtained the church of Chevell. by authority of the Apostolic See and had possessed it peacefully for some time, at last, compelled by the gravest fear of the king to swear that he would resign it, he resigned it into the hands of those to whom this pertained. But because things done by reason of force or fear ought to lack the strength of firmness, we command your discretion by apostolic writings that, if it is established to you that the same master was compelled to make the resignation by such fear as could and ought to befall a steadfast man, notwithstanding the aforesaid oath, by which he was bound only to resign and not to refrain from reclaiming, you are to cause the aforesaid church to be restored to him by ecclesiastical censure, the obstacle of any appeal being removed. [Let no letters, etc. Given at the Lateran, on the Nones of February, 1200.]

Chapter V

Latin source headnote: A person absolutely compelled to communicate with an excommunicated person is not excommunicated; it is otherwise if the compulsion was conditional.

The same to the Archbishop of Vidron.

By the sacred canons (*And below:*) We distinguish whether one who communicates with excommunicated persons against his will is constrained by compulsion or induced by fear. In the first case, indeed, we do not believe such a person to be held by excommunication, since he is proved to suffer rather than to act. But in the second case, although fear diminishes the fault, nevertheless, because it does not wholly exclude it—since no one ought to incur mortal sin for any fear—we believe such a person to be stained with the taint of excommunication. [Although, etc. (cf. c. 38, On the Sentence of Excommunication, V.39).]

Chapter VI

Latin source headnote: Relief is not given to one who suffered fear if it was not such as could have befallen a steadfast man.

The same to the Bishops of Marseille and Agde.

Textual note: The Latin Library transcription's *cum venerabili fratri* has been corrected to the grammatically required *cum venerabili fratre*.

When our beloved son [the Abbot of Floreia had recently come into our presence, he carefully explained to us—and the letters of the Abbot of the Islands and certain others contained the same thing—that Cistercian brothers had once dwelt in the Islands of Hyères; but, after they had been led into captivity by pagans, since the place was near the sea, certain canons regular transferred themselves there. Although they had now worn the habit of canons regular for thirty years, they

nevertheless performed works contrary to regular life; but, returning to themselves by the Lord's inspiration, they wished the monastic order to be planted there according to the institutions of the Cistercians. The diocesan bishop also desired this. Hence, at the insistence of that abbot, we gave a mandate to our venerable brother the Archbishop of Arles that, if the desires of the diocesan bishop and those brothers agreed upon this same thing, he should establish Cistercian monks on the aforesaid island, doing concerning the canons what he believed expedient according to canonical propriety.

Having obtained these letters, therefore, that Abbot of Floreia, returning to his own region, before delivering them to the said archbishop, went with our venerable brother the Bishop of Toulon to the aforesaid place, and they obtained the assent and favour of all the brothers dwelling there to such a degree that the Abbot of the Islands delivered the keys of the house and himself into the hands of the other abbot, making profession, together with certain of the canons, that the Cistercian order would thereafter be observed. Certain of the canons also confirmed this in the hands of that Abbot of Floreia by an oath given, giving him a kiss that they would remain in that order to the end; others promised by sworn security that they would not thereafter, by themselves or by others, act against what had been done; the rest swore that, concerning provision for them, they would abide by the decision of the aforesaid bishop and of the nobleman G. de Fossa, the sacristan, who was absent, his assent having been proved by witnesses. He later confessed this upon returning.

Thereafter that bishop and the Abbot of Floreia informed the said Archbishop of Arles by their letters that the diocesan bishop and the aforesaid canons unanimously desired the transfer of Cistercian brothers there. Accepting this, the aforesaid archbishop confirmed what they had done by the apostolic authority which he exercised, committing his functions to them in this matter so that, in his place, they might bring to completion what they had well begun concerning establishment of the Cistercian order there. Obeying his mandates humbly and devoutly, they took care to bring the things enjoined upon them to completion, giving a mandate to the general chapter of the Cistercians that it should take care to establish its order in the aforesaid place. It was therefore sought on behalf of the already-mentioned Abbot of Floreia that the transfer made be held ratified by us and confirmed by authority of the Apostolic See, and also that all transgressors and opponents who, contrary to the vows and oaths given, were striving to impede what had been done by those persons be struck with a canonical penalty.

But F. the sacristan, P. Warardi, and P. Guil. represented the course of the business differently before our venerable brother P., Bishop of Porto, whom we gave as auditor to them and to the other party. For when the case had been delegated by us to the aforesaid Archbishop of Arles under the form which we have set forth above, the aforesaid abbot, coming to the place with the Bishop of Toulon before presenting our letters to the archbishop—who, according to their tenor, ought to have inquired diligently into each particular—on his own initiative occupied the island with an accompanying multitude, steadfastly affirming that the same place had been assigned to him by us purely and simply, whether they wished it or not. And when they felt themselves aggrieved in these matters, with their abbot denying them all aid—who was said to have conceived hatred and ingratitude against certain of the canons (whence, to their loss, he did not fear to place armed men upon the fortification, the ladder being removed from it lest the canons have the means to ascend)—they appealed to the Apostolic See.

But the said abbots, nevertheless not desisting from the violence begun, when they could not corrupt certain of them by a promise of money, wished to compel them by violence to abide by the mandates of the Bishop of Toulon in these matters. And when they could not obtain even the adjournment of fifteen days which certain of them had requested for full deliberation, they were compelled to swear that they would obey the mandate of the said bishop and of G. de Fossa, a layman who had threatened them with a fall from a steep rock, concerning the aforesaid questions. Others promised into the abbot's hand, reserving a year's probation for themselves, that they would observe the Cistercian rule. But certain others neither swore nor wished to make any promise.

Thus, with the truth of these things concealed, the aforesaid bishop and Abbot of Floreia suggested to the said archbishop that the diocesan bishop and all the canons of the place agreed unanimously concerning the establishment of the Cistercians, and his confirmation was obtained in this way. But when, after a few days had elapsed, the aforesaid canons informed the archbishop of all that had been done, sympathizing with them, he revoked what had been done to their prejudice, restoring them to all the things which they had at the time when the letters were obtained; although afterward, passing over the order of law, he sequestered their possession, striking all opponents with the sword of excommunication. And when, with the canons pressing for restitution, he had heard the confessions and attestations of both parties, he judged that the business itself should be remitted to us.

Therefore, when the parties had appeared at the Apostolic See, the often-mentioned despoiled canons accused the Abbot of Floreia in many ways. First, because he had endeavoured to obtain letters from us by suppression of the truth and assertion of falsehood. For it had been suppressed in them that the church of the Islands of Hyères belonged to the Roman Church alone, as its privileges—the transcripts of which the aforesaid archbishop sent to us—clearly indicate. The suggestion of falsehood is perceived from the fact that all the canons, together with the diocesan bishop, desired the transfer of the order, although their opposition clearly proved the matter to be otherwise. Nor was the often-mentioned Bishop of Toulon their diocesan, since they belonged immediately to the Roman Church; hence his assent in this matter was to be regarded as altogether nothing. Second, because through force and fraud he both seduced and compelled them, so that some of them emitted a vow and others gave oaths.]

We therefore, having more fully understood the arguments and allegations of the parties through the already-mentioned Bishop of Porto, who presented them to us in writing, because it was established to us concerning the vow emitted and the oath given by the canons of the Islands that they would observe the rule of the Cistercians or that they would in no way impede the transfer of that church to their order, and since observance of either does not tend toward loss of eternal salvation, unwilling to open a way to perjuries, notwithstanding the violence which was alleged to have been inflicted—since it involved neither fear of death nor torment of the body, and therefore ought not to have befallen steadfast persons—and notwithstanding the fraud by which they alleged that they had been seduced—since such fraud ought to be imputed not so much to circumvention by the aforesaid Cistercians as to their own foolishness—we have judged, with the counsel of our brothers, that silence must by sentence be imposed upon them concerning the restitution sought. [But because, etc. Given at the Lateran, on the fourth day before the Ides of June, 1199.]

Chapter VII

Latin source headnote: When violence has been proved through witnesses, the things lost are proved by oath. And, after the judge has first assessed the value of the things lost and the claimant's oath has followed, condemnation is made.

Gregory IX.

Concerning the fact that your adversary complained that he had been despoiled by you through violence, you judge that proceedings were taken unjustly against you, since he proved the individual things which he lost only by his own oath. But after the violence was established through witnesses, and the things lost through his oath, the judge, after making an assessment according to the quality of the persons and the business, could reasonably condemn you in the valuation of the things lost as declared by the adversary's oath.

Title XLI: On Restitution to the Former Condition

Chapter I

Latin source headnote: If a church was enormously injured in a contract of sale or lease, it can seek restitution to the former condition against such a contract; the buyer or tenant, however, ought not to be defrauded of his price or of expenses incurred by him.

Alexander III to the Bishop of Alfano.

Your fraternity has asked us what ought to be done concerning possessions granted to laymen for a small rent. You should therefore know that, if the church has been injured and its loss is manifestly apparent, since it is not lawful for the bishop to make the condition of that church worse, and the church, by the law of a minor, ought always to be preserved unharmed, whatever is established to have been granted to its detriment ought to revert to its right and ownership. Provision must nevertheless be made that, if perhaps the tenants have improved those possessions by their expense and labour, they ought not to be defrauded of the expenses which they incurred in good faith.

Chapter II

Latin source headnote: A church injured through the negligence of a proctor who did not produce the church's rights is restored.

Innocent III to the Abbots of Saint George and Saint Sergius.

When our beloved sons the elect and monks of Redon came to the Apostolic See for themselves and their monastery, and our beloved son Master A. came for our venerable brother the Bishop of Vannes, we gave them our beloved son G., Cardinal Deacon of Saint George at the Golden Veil, as auditor. Before him that master alleged on behalf of the bishop that, since the monastery of Redon was situated in the diocese of Vannes and subject to the church of Vannes, the aforesaid bishop had hitherto enjoyed undisturbed possession of the subjection. But when, on the occasion of a certain election which had been held there, the parties by common assent obtained letters of commission concerning these and many other matters to our venerable brother the Bishop of Nantes and his colleagues, our beloved sons the Abbots of Mallen. and Granont, two of them, after granting

adjournments at the monks' insistence, at last came to the monastery. The intruder, foreseeing their arrival, renounced the election of this kind and absented himself from the monastery.

But the judges, by apostolic authority, enjoined upon the monks that they elect a syndic or proctor who would both act advisedly and answer effectively in the monastery's cases, strictly forbidding them to elect anyone as abbot until fuller cognizance had been taken of the right which the bishop said that he had in the election of the abbot. Yet the monks, although they had elected a proctor at the judges' mandate, nevertheless, being excommunicated, presumed, contrary to their prohibition, to elect an abbot in a monastery under interdict. The bishop sought the invalidation of his election and his own restitution to the possession of which the monks had despoiled him. Then the judges, after hearing and more fully understanding everything which the parties wished to allege, after the multiple delays granted to the parties for producing both witnesses and instruments, with the witnesses received and the attestations published, pronounced a definitive sentence for that bishop concerning the aforesaid articles, quashing that election by reliance upon apostolic authority. The said master urgently sought that this sentence be confirmed by us.

To this it was answered to the contrary, among other things, that the said bishop and the Abbot of Malegio, while the Abbot of Gnanter was absent—who had been chosen by them as judge, though he had neither announced the causes of his absence nor mandated that the others proceed in the case without him—although it had been alleged by the proctor on behalf of the monks that the monastery itself belonged immediately to the Roman Church and was tributary to the Apostolic See, nevertheless began to proceed too vehemently against them. (*And below:*) We therefore, having heard through that cardinal the things alleged on both sides before him, and having inspected the privileges of our predecessors Leo, Gregory, and Clement, which indicate that monastery to pertain to the right and ownership of the Apostolic See, and understanding that, although the monastery's proctor negligently omitted to exhibit those privileges before the aforesaid judges, he nevertheless protested not so much his own right as ours—namely, that the monastery itself belonged immediately to the Roman Church—lest his negligence redound to the loss both of us and of the monastery, we restored the monks of Redon to a hearing. (*And below:*) But we have judged that the election said to have been made concordantly by the monks while the controversy upon which it depends was pending should neither be confirmed nor invalidated.

Chapter III

Latin source headnote: A church injured by omission of necessary proof can seek restitution to the former condition, notwithstanding the legal term precluding proof. And it can seek restitution not only against a private person but also against a church. This states the rule.

The same to the Bishops of Ely and Florence.

Having heard and understood the merits of the case in the question pending between our venerable brother the Bishop of Worcester and our beloved son the Abbot of Evesham concerning the churches situated in the vale of Evesham, which the bishop asserted to pertain to him by diocesan law, while the abbot asserted them to be wholly exempt from his jurisdiction, we clearly recognized that those churches were not withdrawn from episcopal jurisdiction by the privileges of the Roman Pontiffs, unless perhaps the vale of Evesham is that place which was endowed with liberty by two kings, namely Roe and Offa, and which Pope Celestine of good memory endowed with liberty, as is

contained in his privileges. But they are proved by witnesses to have been possessed with full right by the abbots of Evesham for so long a time that the episcopal right seems to have been lawfully prescribed in them, unless perhaps the church of Worcester was vacant in the meantime for so great a space of time that, with the period of vacancy subtracted, the prescription was by no means completed. (*And below:*) Although, however, the case has been concluded on both sides, nevertheless, because each party omitted proof which it asserts to be necessary, we, considering that each church enjoys the law of a minor, after weighing equity, have restored each against the other for proving the omitted ground, lest either party be injured by serious loss because of negligence of this kind.

Chapter IV

Latin source headnote: Restitution is to be granted for a just cause even to one of full age, provided that a just cause for seeking it is proved; but if it is not proved fully or half-fully, restitution is granted in a favourable cause. This states the rule.

The same to the Prior of Saint Mary at the Prisons and L., Canon of Saint Mary of Mandria.

We learned from the letters of our beloved son the Abbot of Calven. that, when our beloved sons the archpriests Ramisane and Grimol., by our delegation, had pronounced a sentence of separation between the man I. and the woman L., and, upon an appeal being interposed, we judged that cognizance of the sentence should be committed to that abbot and the Archpriest of Padua, the obstacle of any appeal being removed, that archpriest, who could not be present for executing these matters, committed his functions to his co-judge. And when the abbot had assigned a peremptory term to the parties, because the woman's party did not come at the peremptory term, the abbot himself, to whom the other co-judge had committed his functions, after diligently inspecting the allegations of the husband, confirmed the sentence pronounced by the aforesaid judges.

But after eight days, the girl's father, coming to him and learning that he had pronounced the sentence, affirmed by his own oath that a certain man, coming to him and his daughter, fraudulently presented them with false letters in that abbot's name. By these he was instructed that, because the judge could not come on the day which he had assigned, he should present himself before him eight days after the appointed term; and afterward he appealed to the Apostolic See and also supplicated. Although the fraud perpetrated in this manner is not fully established through an oath of this kind, nevertheless, in favour of marriage, from canonical benignity we have admitted the woman's supplication against the alleged fraud and restored her, as one petitioning on behalf of the marriage, to a hearing. We therefore command your discretion by apostolic writings that, taking cognizance of the cause of the former appeal according to judicial order, you are to confirm or invalidate, as shall be just, the sentence promulgated by the first judges, appeal being removed, causing what you decree to be observed by ecclesiastical censure.

Chapter V

Latin source headnote: A church is restored even against a sentence of the Pope. This is the first point. And the cause of restitution to the former condition ought to be tried with the parties present. This is the second point. It states these two things as regards the title.

The same to the Bishop and Chapter of Huesca.

Both from the letters of Pope Celestine of good memory, our predecessor, and from the things which in his time were transacted at the Apostolic See in your presence, brother bishop, and that of our venerable brother the Bishop of Lleida, we have understood the grave complaint of the church of Lleida, which complained both formerly and even now that it had been enormously injured by a sentence pronounced concerning certain churches by Pope Eugenius of happy memory, our predecessor. Hence, when that same Celestine, our predecessor, during the time of Pope Anastasius of pious memory, our predecessor and the immediate successor of Eugenius, while still placed in a lesser office, exercised the office of legation in the regions of Spain, he began, by delegation from Anastasius, to take cognizance of the aforesaid controversy. Alexander, the successor of Anastasius, also committed that same case to him when he again exercised the office of legation in those same regions; and he would also have terminated it with a due conclusion had an appeal not been made from him on behalf of the church of Huesca. Celestine himself frequently attested to all these things both in his letters and orally before us and our brothers.

That same Celestine, when promoted to the summit of the supreme pontificate, also committed the said controversy to our beloved son G., Cardinal Deacon of Saint Angelo, then legate of the Apostolic See, under this tenor: that, after diligently inspecting the privileges of the church of Lleida and hearing the arguments and allegations of the parties, notwithstanding the aforesaid sentence or any rescripts obtained at any time from the Apostolic See or from anyone else, whether on occasion of that sentence or in another manner, to the prejudice of the right of the church of Lleida, with all contradiction and appeal ceasing and removed both concerning the principal question and concerning an incidental one, he should pronounce definitive sentence and, committing it to execution without any difficulty, cause it to be firmly observed by ecclesiastical censure.

But because the apostolic mandate in this matter was not fulfilled by that legate or by others to whom the same case was committed under the same tenor, although the witnesses produced on behalf of the Bishop of Lleida were received, our beloved son Master A., canon of Lleida, coming into our presence, repeated the foregoing complaint in the name of the church of Lleida, urgently entreating and petitioning that through our office the already-mentioned sentence be reformed for the better and the church of Lleida be restored against it.

We therefore deliberated diligently upon that supplication with our brothers and other prudent men learned in both laws, namely canon and civil law. Some firmly asserted that, since the aforesaid C., our predecessor, appeared to have granted the benefit of restitution to the church of Lleida against the already-mentioned sentence, when, notwithstanding that sentence, he judged that the business should be committed, we also ought to admit the supplication of that church, especially because canon and civil laws agreed together in this. For by the canonical statutes it is not denied that a sentence of the Roman See can be changed for the better when either something has been obtained surreptitiously or it has decreed, by way of dispensation, to order something in consideration of ages and times or grave necessities; and according to the civil laws, princes also have permitted restitution to the former condition to be examined in their audience even against matters twice adjudged.

We perceived also, from the date of the sentence found in the register of the already-mentioned Pope Eugenius, our predecessor, that that sentence was promulgated in the first month of his pontificate, when he seemed not yet to have been fully instructed concerning the merits of that case, relying chiefly on this reason: that the privilege of Urban II produced on your behalf had been subjected to

falsification. Yet, by examining its tenor closely in his register, we found it whole and altogether uncorrupted.

But although we wish the rights of the church of Lleida to be preserved unharmed, nevertheless, because we also wish to sustain your church in its justice, at last our deliberation settled upon this: whether restitution against the foregoing sentence was given or ought to be given is to be determined with the parties present, by whose assertions the merits of the causes are disclosed, in accordance with lawful enactments, so that, when we have omitted nothing among the contingent matters, neither party may have anything which it can rightly impute to us.

Therefore we command your discretion by apostolic writings that, by the feast of Blessed Luke next to come, you are to present yourselves before us either in your own persons or through a sufficient and suitable representative, to show, if you can, that the aforesaid sentence ought not to be reconsidered; or, if perhaps justice requires that it be reconsidered, you are to appear, either by yourselves or through a suitable representative, sufficiently instructed so that proceedings may be taken canonically in the principal business. You are to know for certain that, since we desire to put an end to lawsuits and, because of the great distance of the places, recourse cannot often be had to us in the foregoing question without great labours and expenses, if by the aforesaid term, which we assign to you as peremptory, you contemptuously fail to fulfil the things enjoined upon you, we shall nevertheless proceed in that business insofar as we shall be able by law.

But we wonder not a little and are disturbed that you, brother bishop, are said to have obtained confirmation of that sentence and revocation, as though surreptitiously obtained, of all the things which our often-mentioned predecessor C. did for the church of Lleida, since we can scarcely suspect concerning him that he suddenly acted contrary to his writings and assertions—which he frequently presented orally before us and our other brothers—unless he was circumvented.

Chapter VI

Latin source headnote: A petition for restitution to the former condition against a sentence regularly suspends execution of the sentence pending the outcome of that cause of restitution. This fails if there is a presumption of malice against the person seeking restitution, namely that he seeks it in order to delay execution; in that case execution takes place after security has been given for restoration if the person seeking restitution prevails in the cause. This states the rule according to its meaning when joined with the penultimate gloss; and in this final point this text is very exceptional with respect to both laws.

The same.

Textual note: The Latin Library transcription's *speciantibus* has been corrected to Friedberg's *spectantibus*.

When a question concerning various articles had arisen between our venerable brother the Bishop of Burgos and the monastery of Oña, [and when our venerable brother the Bishop of Segovia and our beloved son T., Bishop-elect of Palencia, to whom the said case had been committed by our authority, had remitted it, sufficiently instructed, into our presence, we granted a free and benign hearing to that bishop and to the monk L., proctor of the monastery, who had come to the Apostolic See on this account. When they began to litigate principally concerning the status of the aforesaid monastery,

which the said bishop alleged to pertain to him by the common law, as it was situated in his diocese —and he affirmed that the church of Burgos had enjoyed the exercise of this right throughout long-past times—while it was said on behalf of the monastery that it had from antiquity been endowed with liberty by secular princes and Roman Pontiffs and had enjoyed full liberty for a very long time, we, after hearing the allegations on both sides, at last, with the will of the parties, judged that a settlement should be providently made between them, as is contained more fully in our other letters drawn up concerning this matter.

But afterward, when the parties prosecuted the question concerning the subjection and liberty of the members of that place—namely its monasteries, chapels, cells, and priories—the said bishop specially claimed for himself four things in the aforesaid places. He said that these pertained to him by the common law, the exercise of which right he had enjoyed from antiquity, asserting that the clerics of those places were bound to attend the synods of the bishops, archdeacons, and archpriests of Burgos, to observe sentences of excommunication or interdict promulgated by them, to furnish annual procurations, and to pay individual gold pieces to a newly installed Bishop of Burgos. To strengthen his own claim, he alleged, concerning the first three articles, the common law—according to which he said that the said clerics, like the others of his diocese, were bound to the aforesaid things—and the free exercise of that right from antiquity, and, concerning the fourth, an ancient and approved custom. He said that proof concerning all these things had been furnished through depositions of witnesses. But the other party alleged to the contrary that the members of the above-mentioned monastery, like the monastery itself, had from antiquity been endowed with liberty by privileges of secular princes and the Roman Pontiffs Urban II, Paschal II, Eugenius III, and Alexander III, and had enjoyed liberty of this kind throughout long-past times, as it said was manifestly established through those privileges exhibited before us, the instrument of Victor, formerly Bishop of Burgos, and the depositions of its own witnesses.]

We therefore, having heard and understood the things which each party alleged before us, condemned the monastery of Oña concerning the four aforementioned articles, with the counsel of our brothers, as justice required. But after sentence had been pronounced, the monastery's proctor, in the name of the monastery, sought restitution to the former condition in order to prove prescription both concerning the four aforementioned articles and concerning certain tithes acquired by the monastery through a settlement and sought on behalf of its churches and tenants. We wished to terminate the controversy concerning these tithes by the decision of a sentence, and the case concerning them had been concluded before the above-mentioned judges. And when there had been litigation before us for some time concerning this, we, after prior deliberation, judged that restitution to the former condition for proving prescription should be granted to that proctor in the name of the monastery, both concerning the four aforementioned articles and concerning the controversy over the tithes, [giving a mandate by our letters to you, brother Bishop of Zamora, and to our beloved sons Masters Maurice, Archdeacon of Toledo, and Michael, canon of Segovia, that you receive the witnesses whom the monastery's party shall judge should be produced to prove lawful prescription concerning the four often-mentioned articles and the issue of the tithes, or whom the bishop shall judge should be produced to prove interruption; and, if it proceeds with the will of the parties, you are to terminate the case itself with a due conclusion, appeal being removed; otherwise, you are to remit it to us sufficiently instructed, fixing for the parties a suitable term on which they are to present themselves again before us to receive sentence, with the Lord's favour.]

But lest, through contrived malice, as seemed from several [certain] presumptions, it happen that the effect of the sentence be impeded to the bishop's loss, and lest the monastery incur loss through execution of the sentence because of various suspicions, we, after weighing equity, judged that provision should be made by law so that, before all else, the above-mentioned sentence pronounced by us be committed to execution [by you]. (*And below:*) We nevertheless will and command that you receive suitable security from the bishop himself that, if the monastery prevails in that case [by sentence], he will restore to the aforesaid monastery all the things which in the meantime he shall have received on occasion of that sentence. [Given at the Lateran, on the eighth day before the Kalends of May, in the thirteenth year of our pontificate, 1210.]

Chapter VII

Latin source headnote: After a peremptory term a church is not heard under the common law; it is heard, however, through the benefit of restitution to the former condition.

Honorius III to the Archbishop and Chapter of Braga.

When issue had solemnly been joined before Pope I. of happy memory, our predecessor, between our venerable brother the Archbishop of Toledo and you, brother archbishop, concerning the primacy, a peremptory term was assigned. (*And below:*) But after the appointed term had elapsed, following no slight wait, your proctors appeared; but because, as they said, they had not brought the depositions of the witnesses and other documentary supports, they urgently requested a delay. But after we had ruled against them concerning the delay sought, at last they petitioned that a delay be granted to the church of Braga for instruction of the case through the aid of restitution to the former condition, exhibiting a special mandate from you concerning this. We, with the counsel of our brothers, have judged that this should be granted to you through the benefit of restitution until the octave of Pentecost next to come.

Chapter VIII

Latin source headnote: A minor is restored concerning what he contracted or omitted if he proves that he was thereby injured and is within the periods for seeking restitution.

Gregory IX.

Master William, appearing in our presence for himself and his brother I., canon of Parros., showed in a petition presented to us that, when they were of minor age and their mother, whose successors they are, had been removed from human affairs, the late William, their father, sold to certain persons, for a certain quantity of money, certain possessions common to both; and, so that a sale of this kind might have the strength of firmness, he emancipated them and caused them to consent to the contract. Therefore he supplicated that we command either that the same sale be declared null, or—since they still remain within the time granted for obtaining the benefit of restitution to the former condition, and under an approved custom of the municipality of Parros. the right of offering the price to the buyers concerning the other share belonged to them as the nearer persons within a year and a day from the time of the contract, which they have hitherto omitted—we would deign, through the same benefit, to give them relief concerning both matters, since they are known to have been injured not slightly in this and are prepared to offer the price to the buyers of that share or their successors. Therefore we command that, if you find the foregoing to rest upon the truth, you take care either to

declare the aforesaid sale null as regards the share devolving upon them from the maternal succession, if the due legal solemnity was omitted in it; or, if perhaps it intervened and it is established that they were injured, you are to endeavour by our authority to restore them to the former condition both concerning that share and concerning the remaining share, provided nevertheless that they shall judge that what they offer ought to be done.

Chapter IX

Latin source headnote: Restitution to the former condition is to be sought from an ordinary who possesses administrative authority, or from one delegated by him, whether this cause was specially delegated or arises incidentally in a cause generally committed to him. It ought not, however, to be sought from an ordinary who does not possess administrative authority or from his delegate, unless it arises incidentally in a cause. An arbitrator does not take cognizance of a cause of restitution and cannot be assumed in major causes.

The same.

A cause of restitution to the former condition can be tried and concluded before ordinary judges possessing administrative authority or persons delegated by them, whether this has been specially mandated to those delegates or a question of this kind happens to arise in the business committed to them. But persons delegated by ordinaries who do not possess administrative authority, but only the faculty of judging, or arbitrators, cannot take cognizance of this cause unless it has arisen incidentally before them. In a matrimonial, status, or criminal cause also, since they require higher judges, an arbitrator cannot be assumed.

Chapter X

Latin source headnote: Restitution denied to a church is not thereafter granted to it unless for a new cause; it is nevertheless restored for appealing from the sentence of denial.

The same.

When the benefit of restitution to the former condition has been denied to your church in another trial, it appears that restitution can be denied to that same church, except for an omitted appeal, unless it is to be admitted to a benefit of this kind because of new defences.

Title XLII: On Alienation Made for the Purpose of Changing the Court

Chapter I

Latin source headnote: One to whom a thing has been alienated for the purpose of changing the court is sued by a rescript obtained against the alienator.

Alexander III.

We have heard from the certain report of some persons that, when certain ecclesiastical men of your province obtain letters of commission from us for prosecuting their justice, their adversaries, in order to elude our mandate, before our letters reach the judges, or even afterward, before they are cited by them, break forth into a declaration of appeal, or, making an exchange, maliciously introduce certain persons into possession of the things concerning which the controversies are pending. We therefore,

wishing with pastoral solicitude to make provision against the aforesaid cunning and craftiness, command your discretion by apostolic writings, by way of precept, that if the adversaries of those between whom and that person a controversy concerning the church has [for a long time] been conducted shall have appealed in this way to nullify our mandate, or shall have made an exchange concerning the possession about which the controversy is pending, or shall have judged that they should maliciously absent themselves, you are, appeal ceasing, to compel those who have thrust themselves into possession of the aforesaid [church] to obey the equity of law under your examination.

Chapter II

Latin source headnote: A cleric ought not to receive an assignment from a layman for the purpose of changing the court.

Gregory IX to the Abbot of Saint Nicholas and the Dean of Furnes in the Diocese of Thérouanne.

It was alleged on behalf of the aldermen of Ypres that, when questions arise among the laymen of that place which are to be settled by secular judgment, certain clerics cause rights of action to be assigned to themselves, by gift or for a price, by some of those laymen, so that they may draw the adversaries to the ecclesiastical forum and obtain plunder from commerce of this kind. (*And below:*) Therefore, since lawful enactments prohibit assignments and purchases of lawsuits in such a way that they visit loss of the case upon those who presume in this manner to summon the patronage of more powerful persons for themselves, and since they are also odious because they appear to proceed from the fountain of cupidity, we command that you restrain the aforesaid clerics from presumption of this kind by ecclesiastical censure.

Title XLIII: On Arbitrators

Chapter I

Latin source headnote: Arbitrators are to be chosen in an odd number, and, when they disagree, the sentence of the greater part stands.

From the African Council.

Certainly (*And below:* [cf. c. 3, On the Competent Forum, II.2.]) But if, by the common agreement of the bishops between whom the case is pending, they choose arbitrators, let either one or three be chosen, so that, if they choose three, they are to follow the sentence either of all or of two.

Chapter II

Latin source headnote: An arbitral award or arbitral decision containing a sin which cannot be remitted by the parties is null.

Alexander III to the Archbishop of York.

Textual note: The source's evident typographical *prebyterum* has been corrected to *presbyterum*.

Not without great necessity and danger to his body, the priest A., bearer of the present letters, wearied by the journey to the Apostolic See, alleged to us in a manifold complaint that, when he had

been instituted as chaplain in the church of Saint Alfrid of N. by the hand of R., archdeacon and canon of Suella, the person of that church, after the death of that same R., M., his nephew, who succeeded him in the already-mentioned church, again appointed that priest as chaplain there for greater security. During their times, he asserts that he held the chaplaincy of that church peacefully for thirty years and more.

But at last the same M., wishing to remove that priest from the same church, began to make undue exactions upon him, and a certain man of his, coming out near his house, laid violent hands upon him; and that same M. himself endeavoured to circumvent him so that he should not delay in yielding the aforesaid chaplaincy in return for five marks of silver, which that same M. also promised that he would pay him annually in the name of a pension. But when the aforesaid priest was unwilling to execute his will, the aforesaid M. is said to have done so much that, after many injuries and burdens had been inflicted upon him and all his other things had been seized, he was despoiled of office and benefice.

And when that priest, still living in exile outside your province, could not obtain justice concerning his benefice through you, at last, because, as he asserts, he was pressed by many necessities and could no longer endure his poverty, an oath was extorted from him through the craft and fraud of M. himself, that he would accept and observe the award of two clerics concerning the matter. Favouring the already-mentioned M., they commanded that priest that he should receive only five marks from him and yield the entire claim. Therefore, because it is in no way fitting for you to permit what they wrongly awarded to be left uncorrected, we command your fraternity by apostolic writings that you earnestly admonish and induce the aforesaid clerics so that, if they recognize that they made so wicked an award in this matter, you are wholly to absolve the already-mentioned priest from observance of the oath by our authority; or, if you know the award itself to rest upon equity, you are to compel both parties to its observance, appeal being removed.

Chapter III

Latin source headnote: An arbitrator chosen in a cleric's patrimonial cause cannot adjudge property of the church to be possessed, even for the life of the cleric. It says this, and it is a noteworthy case.

The same to the Bishop of Exeter.

It has reached us that, when the cleric W. of Calestin was of minor age, G. of Cal. took the sister of the same cleric G. as wife, and the same G. affirmed by the pledging of faith that he would give five shillings sterling to him annually. Hence, when afterward a controversy had arisen between them concerning the same five shillings, they submitted to four persons, who made an award between them in such a way that the same G. would receive annually, in place of the aforesaid five shillings, the tithes belonging to him and to his peasants which the aforesaid G. is known to have in the parish of Cal. Therefore, because an award of this kind could hereafter prove pernicious to the church of the already-mentioned place, and neither the aforesaid W. nor those persons to whom the matter had been submitted ought in any way to have done this to the damage of the church, we command your fraternity by apostolic writings that you diligently inquire into the truth of the matter and, if you find it to be so, you are diligently to admonish the above-named G., and compel him by ecclesiastical coercion, to leave the aforesaid tithes entirely free to the church of which he is a parishioner, every pretext and appeal being removed, and not presume to claim anything further for himself on an

occasion of this kind. But you are to admonish the above-mentioned cleric that he should endeavour to reach an amicable and peaceful agreement with the same G.

Chapter IV

Latin source headnote: A submission cannot be made to an individual woman as arbitress; it is otherwise if a woman otherwise possesses jurisdiction by the common law or by custom. For then a valid submission can be made to her even concerning the temporal things of a church. This states the rule clearly.

Innocent III to the Chancellor and Master Loth., Canon of Paris.

Textual note: The source's evident typographical *comtemptores* has been corrected to *contemptores*.

Our beloved sons the Abbot and Convent of Scarduna of the Cistercian Order showed us in their complaint that, when a question was pending between them on the one side and our beloved sons the Hospitallers of Ceresiers in the diocese of Sens on the other concerning the right of use in a certain wood at Oscha, which is called Fagetum, and the territory of the valley of Morini, a submission was made on both sides to our dearest daughter in Christ, A., the illustrious Queen of the French. After hearing the allegations on both sides and more fully understanding the merits of the case, with the counsel of very many bishops and other prudent men, she judged that the award should be promulgated by definitive sentence, and caused it, reduced to writing, to be confirmed by her own seal and the seals of the bishops who were present. The Hospitallers do not fear rashly to act against her sentence.

Although, according to a rule of the civil law, women are removed from public offices of this kind, and it is said elsewhere that, even though they are of the highest reputation and most excellently established, if they undertake an arbitration themselves, or if patronesses interpose a hearing among their freedmen, they are to be excluded from every judicial examination, so that from their pronouncement no penalty may be had against those who rightly contemn them, and no exception based on the agreement; nevertheless, because according to an approved custom which is observed as law in the regions of Gaul, pre-eminent women of this kind are known to possess ordinary jurisdiction over their subjects, we command your discretion by apostolic writings that you take care to admonish and induce the aforesaid Hospitallers to observe that award—especially since it was reinforced by the presence and counsel of bishops—as it was providently pronounced without depravity and willingly received by each party, and, if necessary, you are to compel them to this by the penalty established in the submission, appeal being set aside. [But the witnesses, etc. Given at the Lateran, on the second day before the Nones of November, in the fifth year of our pontificate, 1202.]

Chapter V

Latin source headnote: An exempt church cannot make a submission to arbitration to the prejudice of its exemption. This states the rule, and clearly.

The same to the Abbot and Convent of Pigravia.

When, in the time of Pope C. of good memory, our predecessor, you, son abbot, had come to the Roman curia, you merited to obtain a privilege and other writings from the Apostolic See, [and, as we have received from you, when you had returned to your own region, you caused the said privilege and

other writings to be faithfully recited in the presence of your brothers and certain canons of Merseburg who had come there in defence of certain monks. When our venerable brother the Bishop of Merseburg learned this, he announced and wrote to the emperor that you had come to the Roman Church against the honour of the empire and had obtained a privilege to its prejudice. Moved by this, the emperor summoned you to his court and ordered the privilege to be presented to him; having received it, he afterward refused to return it to you. And while you felt yourself aggrieved in these and other matters through the bishop, after interposing an appeal you visited the Apostolic See. When letters of commission had been obtained from it through messengers, the judges cited the parties, intending to proceed in that case according to the form of the apostolic mandate. But while these things were being done, our venerable brother the Archbishop of Magdeburg, at the petition of the aforesaid bishop and by imperial mandate, removed you, suspended from office and benefice, from the administration of the monastery and assigned its care to two knights.]

Hence, fearing that danger would come upon the abbey, since danger also threatened you, concerning the controversies pending between you and the Bishop of Merseburg and certain of your monks, with faith pledged on both sides into the archbishop's hands, you promised that you would observe the award of the Archbishop of Magdeburg. And thus it happened that the archbishop himself, associating with himself both clerics and laymen, [among whom was also the imperial seneschal,] promulgated an award under a certain form.

[After these things, coming again to Rome, you took care diligently to explain to that same predecessor of ours the things which had been done. We ourselves, when we were placed in a lesser office, and our beloved sons I., Cardinal Priest of the title of Saint Stephen on the Caelian Hill, and I., Cardinal Priest of the title of Saint Prisca, were appointed auditors for you and your adversary, the custodian of Merseburg, proctor of the said bishop. At last, after hearing the things which the parties judged should be alleged, with the parties' assent the case was committed under a certain form to delegated judges, namely, that they should inquire diligently into everything, except that they should reserve entirely for examination by the Apostolic See the investigation of the liberty of that monastery together with two chapels.

Therefore, when the delegated judges had summoned the parties into their presence by apostolic authority, the aforesaid bishop alleged that those delegates were suspect to him and assigned multiple causes of suspicion. Thereafter also, wishing to evade their judgment, he appealed to the Apostolic See; but, having afterward returned before them, he gave the oath against calumny, produced witnesses, and requested and obtained adjournments. Therefore those judges, proceeding in the case, after hearing the arguments of both parties and understanding them more fully, sent all the proceedings, strengthened by the protection of their seals, to the Apostolic See, imposing a term upon the parties on which they were to present themselves personally before the apostolic presence to receive sentence.

You came to that term personally, while the bishop sent on his behalf our beloved sons H., canon of Merseburg, and B., scholasticus of Saint Nicholas of Merseburg, as representatives. They said that the proceedings which the delegates had transmitted ought neither to be published nor any faith at all be given to them, since they had been received and recorded both by suspect judges and after an appeal had lawfully been interposed. Your party petitioned to the contrary, especially because, as it firmly asserted, the aforesaid messengers did not have capacity to stand in court, since they were

excommunicated, and it had been enjoined upon the bishop under penalty of suspension that he should come in his own person to conduct the case. Since he had not done so, he had incurred the penalty of suspension. The aforesaid messengers alleged that, because of illness and old age, he could not come personally to the Roman Church, denying the other things which had been objected against them.

On behalf of the bishop they represented the affair in this way: since you had received the abbey and the priesthood from him as from your prelate, as you had confessed in court, because of your depraved manner of life you began to be sued by the monks concerning many enormities. The bishop frequently restored peace and concord among them, admonishing you to pass to the fruit of a better life. But when, because of the things which you continually did, the brothers now had no hope at all of your correction, they alleged against you in synod concerning dilapidation that you voluptuously consumed the goods of the monastery assigned for the uses of the poor, that because of a lack of necessities religious life was wholly perishing there, and they also assailed you concerning sacrilege, simony, and many other crimes, sometimes before the bishop and sometimes in the presence of the cardinal. The bishop endured you for so long that he was said to deny justice to the monks.

When afterward you had been cited by the bishop, you sent a messenger who appealed concerning every grievance which could be inflicted upon you by a sentence of the archbishop. But when neither you nor a messenger came to the archbishop, the archbishop himself judged that no deference at all should be paid to an appeal made so generally to the prejudice of the church. Therefore the bishop, having taken the counsel of prudent men, cited you again and suspended you from office and benefice. Meanwhile our beloved son I., Cardinal Priest of the title of Saint Stephen on the Caelian Hill, then legate of the Apostolic See, arrived and came to the said abbey in order to compose matters between you and the aforesaid monks. But while you were hiding in neighbouring villages and Master Ulric was making allegations, the said cardinal confirmed the sentence of suspension pronounced against you.

Thus, coming secretly to Rome, with the truth concealed you obtained letters of commission and, under the appearance of renewal, a privilege which you had never possessed before. And when the delegated judges were suspect to the bishop and the monks, from whom they could not obtain even one day's adjournment, after an appeal had been interposed by the bishop's messengers, immediately when the surreptitious privilege was read, the parties transmitted their messengers to the Apostolic See. With their assent the case was at last committed to other judges under a certain form, as is contained in the letters of commission. But when not all of them could take part in the examination of the case because of the excessive distance, our beloved son the Abbot of Goizoche, together with our venerable brothers the said archbishop and the Bishops of Bamberg and Meissen and very many prelates of churches, restored peace and concord between the bishop, you, and the monks.

But, coming secretly again to the Roman Church and alleging many things against the monks and the bishop, you obtained letters of commission to two of those judges whom we said above were suspect to the bishop and from whom that bishop had recently appealed through messengers. When they would not admit the bishop's just exceptions, which he wished to prove immediately, he appealed to the Apostolic See. But while they nevertheless proceeded in the case, he came to them against his will, fearing that his justice would perish. When, after other things which the judges had done on their own initiative, they fixed a term for publication of the attestations, when the parties came only

one of the judges appeared, together with a messenger of the other, who neither had letters for the others nor wished to give security that his principal had committed his functions to the judge present. Thus it happened that the Provost of Naumburg alone, although three seals were affixed, recorded the proceedings which were sent to the Apostolic See. Hence they said that no faith at all ought to be given to them, both because the instrument containing the report of those judges was defective on its face and because it was issued by one whom they say was bound by many bonds of excommunication.

But you firmly asserted that almost all the foregoing allegations made on behalf of the bishop lacked truth. Because, however, the aforesaid bishop, in that he gave the oath against calumny, sought adjournments from the delegates, and produced witnesses before them, appears to have renounced the appeal and consented to their examination, we, after taking the counsel of our brothers, ruled upon the aforesaid incidental question that the things transacted before the aforesaid judges ought to be published, so that our sentence might at last be framed according to their tenor.]

We therefore gave to you and the proctors of the aforesaid bishop our venerable brother O., Bishop of Ostia, and our beloved son P., Cardinal Priest of the title of Saint Cecilia, as auditors. And when they had faithfully reported to us and our brothers the things alleged and shown on both sides, because it was lawfully established both through confessions and through attestations that, with faith given on both sides, a submission was made to the aforesaid archbishop and also to certain others, we, with the counsel of our brothers, decree that the award pronounced by him is to be observed, excepting only those articles expressed in the award which are contrary to the liberty of that monastery and its two chapels. For, even if you wished it voluntarily, you nevertheless could not by law, without the permission of the Roman Pontiff, renounce privileges or indulgences of liberty which indicate that monastery to pertain to the right and ownership of the Roman Church, especially since in the last letters of commission it is expressly contained that our [often-mentioned] predecessor willed that no prejudice should be generated for you or your successors, or even for the monastery and two chapels of Pigravia, from the renunciation which you made concerning the privilege and other writings. [Given at Rome, at Saint Peter's, on the third day before the Ides of July, 1198.]

Chapter VI

Latin source headnote: An arbitrator does not have power to judge beyond the matters comprised in the submission; therefore no counterclaim is made before him.

The same to the Bishop of Saint Andrews and the Abbot of Bechot.

When our beloved son [the abbot and canons of Cambuskenneth had, by authority of our letters, drawn our beloved sons the abbot and monks of Dunfermline in the diocese of Saint Andrews into a lawsuit before our venerable brother [name omitted], Bishop of Dublin, and our beloved sons [name omitted], Abbot of Coupar, and [name omitted], Abbot of Scone, of the same diocese, concerning certain tithes pertaining to their church of Eccles and damages and injuries inflicted; and those monks had sued the same abbot and canons by our delegation before our beloved sons [name omitted], Prior of Holyrood, and [name omitted], Dean of Tyninghame, of the aforesaid diocese, and you, son official, concerning the chapel of Dunipace and the tithes pertaining to it, each party, after multiple allegations and altercations, made a submission to you, so that, proceeding in those matters according to the order of law, you would terminate those controversies, concerning both possession

and ownership, by judgment or agreement, appeal being set aside. Confirming this by a corporal oath, they affirmed that whatever two of you together with you, brother bishop, should judge ought to be established concerning these things, if you all could not agree together, they would hold ratified and firmly observe, and that they would not impede the arbitral proceeding by fraud or malice.

Therefore, after hearing the allegations on both sides, receiving the witnesses, and publishing their depositions, because you were in doubt concerning four articles, you transmitted the instructed case into our presence, imploring an oracle of the Apostolic See concerning those four doubtful matters. The first question arose before you from the fact that, when the canons sued the monks concerning the aforesaid tithes, the monks wished to sue those canons concerning certain other tithes, although no submission had been made to you concerning them. For the monks' party asserted that, according to lawful enactments, one who is sued before someone can sue the same person before that same judge.] Hence you petitioned that whether there is a place for a counterclaim before arbitrators be explained through the Apostolic See. [But the second, etc. (cf. c. 9, On the Reliability of Instruments, II.23).] We therefore respond to your discretion concerning the first article in this way: although in a judicial proceeding the person who is sued before a judge can counterclaim against the claimant, nevertheless he cannot counterclaim before arbitrators, since arbitrators cannot judge except concerning only those things about which a submission was made to them. [As to the second, etc. (cf. c. 9, On the Reliability of Instruments, II.23). Given at the Lateran, on the thirteenth day before the Kalends of April, in the tenth year, 1207.]

Textual note: The Latin Library transcription represents five omitted personal names with Ö. Friedberg likewise prints blank-name markers; they are explicitly identified as omitted names above rather than conjecturally supplied. The transcription's *fruerit* has also been corrected to Friedberg's *fuerit*.

Chapter VII

Latin source headnote: One who is bound by an award to elect with the counsel of certain persons is bound to seek their counsel in the deliberation concerning the election, but is not constrained to follow it.

The same to the Rector and Brothers of the Hospital of Saint Bartholomew of Lucca.

When formerly a question was pending concerning the election of a rector and brothers in your hospital between you and our beloved son the Prior of the church of Saint Bartholomew of Lucca, before the Prior of Saint Fridianus and the primicerius of Saint Martin of Lucca, judges delegated by the Apostolic See, and each party, making a submission to them, promised that it would observe their award, and those judges determined that a certain award should be pronounced, a doubt arose on both sides concerning the award pronounced by them, which you petitioned to be clarified through the Apostolic See. We therefore, having diligently inspected the public instrument containing the award, recognized that, according to the form of the award, the Prior of Saint Bartholomew of Lucca is bound to take counsel with the household of that hospital and to deliberate with it concerning finding a rector; but, whether the household agrees or disagrees with that prior, the same prior ought in either case to elect the rector. For this reason we say that, unless the prior has deliberated with the household of the hospital concerning finding a rector and has sought its counsel, he does not have power to elect the rector, and, if he elects him in another manner, his

election ought to be regarded as void and empty. But, after counsel has been taken with the household concerning this and deliberation held concerning finding a rector, the prior himself can freely elect a rector, provided only that he is suitable, whether the household agrees or disagrees with him concerning the selection of the rector. [But lest, etc. Given at Sora, on the fourth day before the Nones of August, in the eleventh year of our pontificate, 1208.]

Chapter VIII

Latin source headnote: A submission concerning spiritual matters cannot be made to a layman.

The same in the General Council.

It sometimes happens that, when to a claimant (*And below:* [cf. c. 9, On Fraud and Contumacy, II.14.]) For this purpose we generally prohibit a submission concerning spiritual matters from being made to a layman, because it is not fitting for a layman to arbitrate in such matters.

Chapter IX

Latin source headnote: By authority even of a delegated judge, a submission concerning a spiritual cause can be made to a cleric and a layman; and, if the award has been accepted by the parties, it ought to be committed to execution by them, although the submission was made through a general proctor. But if the award was not approved and a penalty was added, an action lies for the penalty; otherwise, for the interest. This states the rule generally by adhering to the letter.

The same to the Archbishop of Pisa.

You informed us by your letters that, when you had received letters from us concerning execution of an award pronounced between the Hospitallers of Saint John and the pleban of Pescia concerning the hospital of Saint Allucius, when the parties had appeared in your presence, the Hospitallers sought execution of the award from you, asserting that it ought to be observed because the pleban's proctor voluntarily made a submission to the arbitrators after interposing an oath, since he said that he had received power to make a submission and settlement concerning that business. The pleban alleged to the contrary that he gave the aforesaid proctor a general mandate to conduct the case; nevertheless, he did not mandate him to make a submission or settlement concerning it without his special mandate; and, moreover, the aforesaid proctor had not been appointed with the assent of his canons. And therefore he said that the award was invalid, especially since the proctor had exceeded the limits of the mandate and the award had been promulgated by one cleric and two laymen, although they had pronounced the award with the assent of our venerable brother the Archbishop of Genoa, to whom the case had been committed.

Hence, when doubt had arisen concerning these matters, you petitioned to be instructed by an oracle of the Apostolic See how you should proceed concerning that business. Concerning this we respond to your fraternity in this way: if the award was accepted on behalf of the pleban, it ought to be held ratified without distinction and thereby committed to execution according to the tenor of the apostolic mandate. But if it was not accepted, it matters whether or not a penalty was established for observing it. And indeed, if a penalty was added in the submission, an action can be brought for the penalty. But if no penalty was established, but a submission was made simply that the sentence would be obeyed, the proctor can be sued for the interest, because by his oath he could bind himself personally, but not the church. That it is said to have been pronounced by two laymen and one cleric

appears in no way to stand in the way, since it was done by authority of the said archbishop, to whom the cause concerning which the submission is said to have been made had been delegated.

Chapter X

Latin source headnote: If two persons elected in discord to the same prelacy make a submission to the ordinary, the submission expires upon the death of one of those making it; the ordinary nevertheless proceeds by ordinary power concerning the right of the survivor before passage is made to another election. This states the rule.

Honorius III to the Archbishop of Cologne.

It was intimated to our ears on your behalf that, when the provostship of Saint Cunibert in Cologne was vacant, the canons of that church, disagreeing on the day fixed for the election concerning the appointment of a provost for themselves, divided their votes between two, namely H. of Jülich and C. of Lombardy. When afterward deliberation was held concerning an election of this kind and the parties had appeared in your presence, they at last took care, after pledging faith, to make a submission to you concerning this. After diligently inspecting and ascertaining the merits of the case, with their assent you fixed a day for pronouncing a definitive sentence. Meanwhile, however, after the aforesaid H., elected by one party, had been removed from their midst, you took care to forbid the above-mentioned canons to proceed to make another election while your sentence was pending; some of them nevertheless elected B. of Ahrberg, canon of Cologne. Therefore, on the day when the sentence ought to have been pronounced, when the parties had appeared in your presence and the aforesaid C. petitioned that you pronounce a definitive sentence, the said B., to the contrary, alleged that you ought not to proceed further.

Therefore, to you, who humbly petition to be instructed by us, we respond briefly that, although the arbitration was ended by the death of H. himself, nevertheless you ought first to have taken cognizance of the merits of the first election before a proceeding was made to the second. For if perhaps the said C., who survives, has a right in the election concerning which the submission to you was made, it is established that the second election is wholly invalid. [On the fourteenth day before the Kalends of July, in the second year, 1218.]

Chapter XI

Latin source headnote: An arbitrator chosen after a matter has been adjudged, concerning new disputes, cannot alter the sentence by his award, even if he received a mandate from the Pope to compose matters between the parties.

The same to the Bishop-elect and the Abbot of Saint Zeno and C., Canon of Verona.

The petition of our beloved son O., Bishop-elect of Feltre and Belluno, presented to us contained that, when the case which formerly was pending between his predecessor of good memory on the one side and the citizens of Treviso on the other concerning the district, jurisdiction, and other matters had been terminated by the sentence of our venerable brother the Bishop of Ostia, then legate of the Apostolic See, and the predecessor of that bishop-elect had for a long time peacefully possessed the things adjudged to him by that legate, nevertheless the bishop-elect himself, having at last obtained the assent of his chapters, to the prejudice of his churches made a submission with the other party to the nobleman the Duke of the Venetians as arbitrator concerning certain disputes which seemed to

have arisen on both sides. Acting contrary to that same sentence confirmed by apostolic authority, the duke, with equity set aside, promulgated an iniquitous award against the aforesaid churches concerning matters adjudged by that legate.

Although we sent our letters to that duke that he ought to labour to compose matters between the parties, nevertheless, since it was not our intention to alter that sentence or to stir up the complaints quieted by it, we command your discretion [by apostolic writings] that, notwithstanding the aforesaid letters, you revoke as void whatever you find to have been done by the award of the above-named duke against the sentence of that legate, strictly forbidding him to proceed further in the submission, and compelling him by ecclesiastical censure, appeal being set aside, to restore the hostages and a certain castle given to him on occasion of that submission so that his award would be observed. [Given at Rieti, on the eighth day before the Ides of September, in the tenth year, 1225.]

Chapter XII

Latin source headnote: A submission made to two or more persons, with this added—that in a case of disagreement a third is to be chosen by them or by others—is invalid. This states the rule.

Gregory IX to the Dean and Master P., Canon of Saint Peter in the Diocese of Arras.

It became known to us from the complaint of the layman William that, when the layman O. sued him concerning a certain sum of money before judges by apostolic authority, a submission was at last made by the parties to two arbitrators, but in such a way that, if those two disagreed with one another, the named judges would add a third, nevertheless retaining for themselves the power to compel the parties to observe the award to be promulgated by the said arbitrators. And when a third arbitrator chosen by the aforesaid judges, together with one of the two, condemned him to the other party, he, feeling himself aggrieved by the often-mentioned judges because they were compelling him to observe an award of this kind, appealed to our hearing; but they, in contempt of the appeal, pronounced a sentence of excommunication against him. We therefore command that, if it is so, since it has been established by legal provision that a submission concerning an uncertain person to be assumed into the arbitration does not bind, you are to declare that sentence of excommunication to be wholly null.

Textual note: The Latin Library transcription's *apellatione* has been corrected to *appellatione*.

Chapter XIII

Latin source headnote: A submission made to one or more persons is valid so that they may decide the case by themselves or through others whom they themselves choose. This states the rule according to the understanding perceived by the gloss here and by Innocent in the preceding chapter, which pleases me. Panormitanus.

The same to the Abbess and Convent of Jouarre.

When it is sought from us (*And below:*) It was alleged on your behalf that, when formerly a question had arisen between you and the Archbishop of Sens because that archbishop, asserting that your monastery was subject to him by metropolitan right, exacted procurations and other things from you, at last, when a submission had concordantly been made by the parties to R., Cardinal Deacon of Saint Angelo, then legate of the Apostolic See, and it had been promised under a certain penalty that they

would obey without qualification his award or ordinance, or that of two mediators whom he should appoint concerning this, Master P., our chaplain, and I., Archdeacon of Sens, mediators appointed concerning this by that legate, terminated a cause of this kind by ordaining and deciding it. We therefore confirm by apostolic authority what was done concerning this by the aforesaid mediators.

Chapter XIV

Latin source headnote: A submission is ended before sentence is pronounced by the death of either of those making the submission; hence it does not pass to their heirs unless provision concerning them was made in the submission. It says this by comprehending the meaning of the chapter.

The same.

A submission does not extend to the heirs of the person making it if provision concerning them is not made there.

Book II

Compilation of the Decretals of Lord Pope Gregory IX

Book Two

Title I: On Judgments

Chapter I

Latin source headnote: A contumacious person can be excommunicated for failing to appear or to answer; he ought not, however, to be deprived of a benefice. This is what it says. Abbas Siculus.

From the African Council.

Concerning Quodvultdeus, Bishop of Centuria, whom, when his adversary had petitioned that he be brought before *our* council, and when he had been asked whether he wished to proceed against him *before the bishops*, he first promised this, but on the following day answered that this did not please him, and departed. It pleased *all the bishops* that no one should communicate with that *Quodvultdeus* until, satisfaction having first been made, he has been absolved. For no one can rightly be considered to have his bishopric taken from him before the conclusion of his case.

Chapter II

Latin source headnote: Laymen ought not to handle ecclesiastical affairs, but they are disposed of by the judgment of prelates. This is what it says. Abbas Siculus.

From the synod of Pope Eugene.

We decree *also* that laymen are not to presume to handle ecclesiastical affairs. But bishops, abbots, archbishops, and other prelates of churches are not to dispose of ecclesiastical affairs, especially those known to be spiritual, by the judgment of [*any*] laymen, nor because of their prohibition are they to cease exercising ecclesiastical justice.

Chapter III

Latin source headnote: A cause concerning the right of patronage belongs to the judgment of the Church. This it says specifically and literally.

Alexander III, to the illustrious King of England.

In proportion as divine grace [*and highest providence have adorned you with the privilege of greater grace,*] so much the more ought you to love religious men with greater charity, and more readily to maintain and foster them in their rights. A cause concerning the right of patronage, however, is so joined and connected with spiritual causes that it can be decided only by ecclesiastical judgment *and terminated solely before an ecclesiastical judge*.

Chapter IV

Latin source headnote: A cleric convicted of or confessing a crime before a secular judge is not punished by his bishop on that account; but one convicted or confessing before him is punished with the due penalty, unless he dispenses with him, which he can do in adultery and lesser offenses; one deposed, however, is not immediately handed over to the secular court. This is what it says from the beginning to the end. Abbas Siculus. § 1. This section is summarized above at the beginning of the chapter; nevertheless, because it has separate and notable matter, state it otherwise: in adultery and lesser offenses a bishop can dispense with clerics after penance has been completed; but one deposed for his excesses is not indiscriminately handed over to the secular court. This is what it says. Abbas Siculus.

The same, to the Archbishop of Salerno.

But if clerics have been convicted of or have confessed a crime before a secular judge, they are not on that account to be condemned in any way by their own bishop. For just as a sentence rendered by one who is not their judge does not hold, so neither does a confession made before him. But if they have confessed their crimes in court before the bishop, or have been convicted by lawful proof, provided that the crimes are such that they ought to be suspended or deposed on account of them, they are not undeservedly to be suspended from their orders or perpetually removed from the ministry of the altar.

§ 2. Concerning adulteries, however, and other crimes that are lesser, a bishop can dispense with his clerics after penance has been completed, *so that they may serve in their orders*; but he ought not to hand over to a secular judge anyone deposed for his excesses, since he has discharged his own office and ought not crush that person with a double contrition. [*Moreover, if a cleric, etc.* (cf. c. 1, On Clerics Fighting in a Duel, V.14.)]

Chapter V

Latin source headnote: A vassal is to be sued before the lord of the fief, even if the lord of the fief is an ecclesiastical person, provided that the claimant can obtain his justice there; otherwise the ordinary of the place can be approached. And according to this it is a notable case. Abbas Siculus.

The same.

Furthermore, because *sometimes, as we have learned*, a sentence of excommunication or interdict is promulgated, on the occasion of those possessions, against those who are known to hold possessions in fief from your church, we most strictly prohibit this as long as they are prepared to exhibit justice concerning these matters in your presence. *But if this has been presumed by anyone with rash daring, let it be lawful for you to revoke that sentence with the remedy of appeal removed. Therefore, let it be lawful for no person to violate this charter of our grant, etc.*

Chapter VI

Latin source headnote: A party is not compelled to express the name of the action in the complaint; nevertheless, he ought to set forth the fact so clearly that the right of action may be gathered from it. This is what it says according to its meaning. Abbas Siculus.

The same, to the Bishop of Exeter and the Chapter of London.

Our beloved sons the prior and clerics of Guisborough transmitted to us a *very grave and difficult* complaint against the Archbishop of York, legate of the Apostolic See. [*And below:* (cf. c. 1, On Appeals, II.28.)] Take more attentive care not to inquire as subtly as many are accustomed to do what kind of action is being brought, but see to it that you investigate simply and plainly the fact itself and the truth of the matter according to the form of the canons and the institutions of the holy Fathers.

Chapter VII

Latin source headnote: An excommunicated person cannot stand in judgment except as a defendant.

The same, to the Bishop of Padua.

We understood *from your letters that, when the daughter of a certain nobleman, your parishioner, had contracted marriage with a certain man, and it was afterward discovered that this same man was held bound by the bond of excommunication for the killing of the Bishop of Vicenza of good memory, she raised a question in your presence. Hence,* because you petitioned us whether an excommunicated person can stand in judgment, we answer that he can be sued and ought to answer in judgment through another, lest he appear to obtain an advantage from his own malice *if by it he should be secure from their proceedings against him*.

Chapter VIII

Latin source headnote: A cleric ought to be sued concerning every crime before an ecclesiastical judge, and a contrary custom is not valid.

Lucius III, to the Archbishop of Esztergom.

Clerics, *especially in criminal matters, can in no case be condemned by anyone other than an ecclesiastical judge, even if royal custom holds that thieves are to be judged by secular judges*. Since the emperor says that *even their* laws do not disdain to imitate the sacred canons, in which it is generally handed down that a cleric ought to be sued concerning every crime before an ecclesiastical judge, prejudice ought not to be generated against the canons in this respect by any custom.

Chapter IX

Latin source headnote: A judge ought by virtue of his office to provide that the due solemnities are observed in judgments; when these are omitted, the judgment is rendered ineffectual. This is what it says. Abbas Siculus.

Clement III.

Hear the cause that is pending between the brothers of the monastery of Durham and the monks of Saint Albans *concerning the church of Cantinz., and terminate it with appeal removed*. Among other things, provide *this* especially: that the brothers of the monastery of Durham enter into the business with the authority and participation of their bishop, lest, if the brothers of Saint Albans prevail, that bishop, presenting himself as abbot of the monastery, be able to revive the settled suit.

Chapter X

Latin source headnote: An incorrigible deposed cleric is to be excommunicated and thereafter anathematized. And if he does not thus return to soundness, he is to be restrained by the secular

judge. This is what it says. Abbas Siculus.

Celestine III.

Since not by man—(*And below:*) It was therefore asked of us on your behalf whether it is lawful for a king or any secular person to judge clerics of whatever order when they have been detected in theft, homicide, perjury, or any crimes whatsoever. We answer your consultation in this way: if a cleric constituted in any order has been lawfully detected and convicted in theft, homicide, perjury, or another *mortal* crime, he is to be deposed by an ecclesiastical judge. If, after being deposed, he is incorrigible, he ought to be excommunicated, and thereafter, as his contumacy increases, struck with the sword of anathema. But afterward, if, descending into the depth of evils, he treats this with contempt, since the Church has nothing further that it can do, lest he be capable of causing the destruction of many more, he is to be restrained by the secular power in such a way that exile is assigned to him or another lawful penalty is inflicted.

Chapter XI

Latin source headnote: By a rescript obtained against a violent possessor, one who knowingly succeeds to the wrongful condition is sued. This is what it says according to the common interpretation, which pleases me. Panormitanus.

The same.

Because V., who was said to have violently occupied the church of the cleric P., is dead, as we have learned, and R. afterward entered it, we command that, according to the form of the earlier letters, the business between R. and P. be terminated under the same judges, with reason as intermediary, just as it would have been between the same P. and the aforesaid V. if he were living.

Chapter XII

Latin source headnote: The Pope alone, and not an inferior judge, takes cognizance of doubts concerning privileges of the Apostolic See.

Innocent III, to the Abbots of Saint Sergius and Saint George.

When they had come—(*And below:*) For since a cause concerning privileges of the Apostolic See is pending, we do not wish judgment concerning them to be given by others.

Chapter XIII

Latin source headnote: An ecclesiastical judge can proceed by way of evangelical or judicial denunciation against any sinner, even a layman, especially by reason of perjury or a broken peace.

The same, to the prelates established throughout France.

He who knows all things, *who is the searcher of hearts and knower of secrets, knows that we love our most illustrious son in Christ, Philip, the illustrious King of the French, from a pure heart, a good conscience, and unfeigned faith, and that we earnestly aspire to his honor, advancement, and increase, considering the exaltation of the kingdom of the French to be the exaltation of the Apostolic See, since this kingdom, blessed by God, has always remained in its devotion and, as we believe, will at no time depart from its devotion; for, although assaults are sometimes made from here and there by evil angels, nevertheless we, who are not ignorant of Satan's devices, shall*

endeavor to avoid his stratagems, believing that the same king will not permit himself to be seduced by his deceits. Therefore, let no one think that we intend to disturb or diminish the jurisdiction *or power* of the illustrious King of the French, since he neither wishes nor ought *even* to impede our jurisdiction and power, *and since we do not suffice to fulfill our own jurisdiction, why would we wish to usurp another's?*

But since the Lord says in the Gospel: "If your brother sins against you, go and correct him between you and him alone. If he hears you, you will have gained your brother; but if he *does not* hear you, take with you *yet* one or two, so that every word may stand in the mouth of two or three witnesses. But if he does not hear *them*, tell the Church; and if he does not hear the Church, let him be to you as a gentile and a publican"; and since the King of England, *as he asserts*, is prepared sufficiently to show that the King of the French sins against him, that he himself proceeded concerning him in correction according to the evangelical rule, and that at last, because he made no progress in any way, he told the Church: how can we, who have been called by the heavenly disposition to the governance of the universal Church, fail to hearken to the divine mandate, so that we should not proceed according to its form, unless perhaps he should show before us or our legate a sufficient reason to the contrary?

For we do not intend to judge concerning the fief, judgment of which belongs to him—unless perhaps something has been taken away from the common law by a special privilege or a contrary custom—but to decide concerning sin, the censure of which belongs to us without doubt, and which we can and ought to exercise against anyone. Therefore the royal dignity ought not to consider it injurious to itself if it submits itself to apostolic judgment concerning this matter, since the illustrious Emperor Valentinian is read to have said to the suffragans of the church of Milan: "Take care to establish upon the pontifical seat such a man to whom even we, who govern the empire, may sincerely submit our heads, and whose admonitions, when we transgress as men, we may necessarily receive as the medicines of one who heals."

Nor should we omit that most humble provision which the Emperor Theodosius established and Charlemagne renewed, from whose lineage the same king is known to have descended: namely, "Whoever has a suit, whether he is claimant or defendant, whether at the beginning of the suit or after courses of time have elapsed, whether when the business is being argued or when sentence has already begun to be delivered, if he chooses the judgment of the bishop of the sacrosanct see, immediately and without any hesitation—even if the other party objects—let the matter be directed, with the statement of the litigants, to the judgment of the bishops."

For since we rely not upon a human constitution but rather upon divine *law*, because our power is not from man but from God, no one of sound mind is ignorant that it belongs to our office to correct every Christian concerning any mortal sin whatsoever and, if he treats correction with contempt, *to coerce him* through ecclesiastical severity. *That we ought and are able to correct is plain from both pages of the Testament, since the Lord cries through the Prophet: "Cry out, do not cease; exalt your voice like a trumpet, and announce their crimes to my people"; and he adds in the same place: "Unless you announce his impiety to the impious man, he will die in the iniquity which he has committed, but I will require his blood from your hand." The Apostle also admonishes us to correct the unruly, and elsewhere the same says: "Reprove, entreat, rebuke in all patience and doctrine." That we also can and ought to coerce is plain from what the Lord says to the Prophet, who was from the priests of Anathoth: "Behold, I have established you over nations and kingdoms, that you may uproot and destroy, scatter, build, and plant." It is certain, however, that every mortal sin is to be uprooted, destroyed, and scattered. Moreover, when the Lord handed the keys of the kingdom of heaven to blessed Peter, he said to him: "Whatever you*

bind upon earth will be bound also in heaven, and whatever you loose upon earth will be loosed also in heaven." But no one doubts that everyone sinning mortally is bound before God. Therefore, so that Peter may imitate the divine judgment, he ought to bind on earth those who are known to be bound in heaven.

But perhaps it will be said that one must act in one way with kings and in another with others. Yet we know it is written in the divine law: "You shall judge the great as the small, and with you there shall be no acceptance of persons," *which blessed James testifies intervenes if you say to the one clothed in splendid apparel, "You sit well here," but to the poor man, "You stand there," or, "Sit beneath my footstool."* Although we can proceed in this manner concerning any criminal sin, so that we may call the sinner back from vice to virtue and from error to truth, *especially* nevertheless when the sin is against peace, which is the bond of charity, [*concerning which Christ specially commanded the Apostles: "Into whatever house you enter, first say: 'Peace to this house'; and if a son of peace is there, your peace will rest upon him. But whoever will not receive you or hear your words, go outside and shake the dust from your feet as testimony against them." For what is it for the Apostles to go outside from such persons except to deny them apostolic communion? What is it to shake the dust from their feet except to exercise ecclesiastical severity? For this is that dust which, when Moses scattered ashes from the furnace, became a plague of ulcers throughout all the land of Egypt. How grave a sentence of severity those who do not receive messengers of peace or hear their words are to suffer at the final judgment, Truth himself consequently shows, setting it forth not simply but with a certain affirmation: "Amen I say to you, it will be more tolerable for the land of Sodom and Gomorrah on the day of judgment than for that city"; understanding by the city its citizens, from whom he did not except kings themselves. Moreover, since according to lawful enactments another may use against a person whatever rule of law that person has established against another, and the wise man declares, "Submit to the law which you yourself have enacted," and since the same King of the French, against Richard of illustrious memory, formerly King of the English—who, that we may speak with due respect for the same king, was not of a worse condition, since we say this not to his confusion but for our excuse—used our office and benefit in war, how will he not admit against himself on another's behalf what he admitted for himself against that king?*] *Surely there ought not to be with us weight and weight, measure and measure, each of which is abominable before God?*

Finally, since treaties of peace were reformed between those kings and confirmed on each side by an oath personally sworn, but were not observed until the appointed time, surely we shall be able to take cognizance of the sanctity of the oath—which without doubt belongs to the judgment of the Church—so that the broken treaties of peace may be restored? Therefore, lest we appear to foster such discord by dissimulation, *to dissemble the destruction of religious places, and to neglect the slaughter of the Christian people*, we have given in command to our beloved son the Abbot of Casamari, the aforesaid legate, that, unless the king himself either restores a solid peace with the aforesaid king, *or enters into suitable truces*, or at least humbly permits the same abbot and *our venerable brother* the Archbishop of Bourges summarily to take cognizance whether the complaint that the King of the English brings against him before the Church is just, or whether the exception that he caused to be expressed against him to us through his letters is lawful, the abbot is not to omit proceeding according to the form given to him by us.

Therefore, through apostolic writings we command all of you, and strictly enjoin you by virtue of obedience, that, after the same abbot has executed the apostolic mandate concerning this matter, you humbly receive his sentence—or rather, more truly, ours—observe it yourselves, and cause it to be observed by others, secure in the knowledge that, if

you act otherwise, we shall punish your disobedience. [*Given at the Lateran, ..., in the seventh year of our pontificate,* 1204.]

Textual note: The Latin Library transcription represents the two blank elements in the dating clause with corrupt high-byte characters. The Friedberg-derived reference text prints ellipsis points in both places; these omissions are preserved above.

Chapter XIV

Latin source headnote: A principal party ought to set forth the fact in judgment personally, not through an advocate, unless that party is without discretion.

The same, to the Bishop of Ely.

The pastoral office—(*And below: cf. c.* 28, On the Office of a Delegated Judge, I.29.) We establish, moreover, that the principal parties are to set forth the fact not through advocates but personally, unless perhaps they are so lacking in discretion that, with the judge's permission, their deficiency is supplied through others. [*But since, etc. Given at Rome, at Saint Peter's, on the fourteenth day before the Kalends of January,* 1204.]

Chapter XV

Latin source headnote: If the action and the claim are inept, or the claim alone, the defendant ought to be absolved from the pending judgment; nevertheless, the claimant will be heard again if he proceeds suitably. This is what it says according to its meaning.

The same, to the nobleman Matthew de Riparia.

Having examined the cause pending between you and the knights of Campania *concerning the church of Saint Angelo de Casaperota, having heard the proceedings, confessions, and attestations, and having investigated the instruments and allegations, we perceived clearly that the arbitral award which T., the vice-lord of Sabina, was said to have promulgated concerning that business had been pronounced contrary to the form of law and of the submission to arbitration. Hence, notwithstanding the confirmation of Pope Celestine, our predecessor of happy memory, who had confirmed it as providently rendered and received by each party, we decreed it null and void.*

We recognized, however, the *action* which you brought against the aforesaid knights concerning the right of patronage of that church to be incongruous and inept, because, although you introduced witnesses to prove that, when the aforesaid vice-lord A. received that church as though sequestered, you possessed the right of patronage of that church, you could neither bring a vindication of the thing nor petition for its restitution. Hence we pronounced that your claim in this respect did not hold, absolving the same knights from it, yet in such a way that, if you wish to bring a congruous and suitable action, they shall nevertheless be bound to answer you. [*Therefore let no one, etc. Given at the Lateran, on the ninth day before the Kalends of April, in the tenth year of our pontificate,* 1207.]

Textual note: The Latin source prints *proiecto* in the sentence explaining why neither vindication nor restitution was available. The word is syntactically difficult and may stand for *profecto*; because it does not alter the stated legal consequence, it has not been represented by an additional English adverb.

Chapter XVI

Latin source headnote: The preceptors of the Temple can sue and defend on behalf of their houses; neither their religious state nor the fact that their origin is unknown stands in their way.

The same, to the Master and Brothers of the militia of the Temple established in Italy.

Since you *are appointed to the service of Jesus Christ, who, since he is just, loves justice, and whose countenance beholds equity, we are bound by paternal solicitude to guard against your losses, lest, because you apply yourselves to works of piety, you suffer injury in your justice.* We have *clearly* learned that certain judges, both secular and ecclesiastical, *in Italy* do not admit the preceptors whom you have in your houses to pursue their justice in causes, as though it were not lawful for those who have resolved to adhere to peaceful pursuits to undertake the care of contentious business. They allege for their exclusion that the origin of those men is not known to them, although, from whatever *places* they have come, called by divine grace, provided they execute the office of their order laudably, knowledge of their nation is required superfluously. Therefore, by apostolic authority we prohibit anyone from excluding those preceptors from suing or answering in the prosecution of causes on an occasion of this kind. [*Therefore let no one, etc. Given at Rome, at Saint Peter's, on the fourth day before the Ides of April, in the ninth year of our pontificate,* 1206.]

Textual note: The Latin Library and Friedberg-derived texts print the apparent typographical form *decrecreverunt*; the translation follows the evident sense of *decreverunt*, "have resolved."

Chapter XVII

Latin source headnote: Prelates ought to do justice to laymen concerning clerics, notwithstanding a frustratory appeal; clerics nevertheless ought not to be drawn by laymen to a secular forum, even when their prelates are negligent.

The same, to the Bishop of Vercelli and the Abbot of Toleto.

In what manner and when—(*And below: cf. c.* 17, On Accusations and Denunciations, V.1.) You are to command the prelates on our behalf to cause full justice to be exhibited to laymen complaining against clerics, notwithstanding frustratory appeals which clerics frequently interpose to their grievance, lest, through a failure of justice, clerics be drawn by laymen to a secular judgment, which we prohibit altogether; *and you are to strive by every means that this not occur. Moreover, we wish your solicitude to remain vigilant against the deceits of heretics, admonishing and beseeching you in the Lord that you apply yourselves prudently and effectively to uprooting from the Lord's field the tares of heretical depravity.* [*Given on the fourth day before the Kalends of February,* 1206.]

Chapter XVIII

Latin source headnote: A judge who, as a private person, has an almost similar cause to the one he has as judge is removed from judging. This is what it says.

The same.

We remember having committed to you, *sons T. and G., and* the Archdeacon of Paris the cause pending between *our beloved son* the Abbot and Convent of Vendôme *on one side* and the Archdeacon of Chartres *on the other* concerning certain procurations. *But the said abbot and convent, unwilling to answer the other party unless they first consulted us in accordance with the privileges of the Roman Pontiff granted to their*

monastery, sent our beloved son W., a monk of that monastery, to the Apostolic See for this reason, petitioning nevertheless that we deign to substitute you, son dean, in place of the aforesaid Archdeacon of Paris for the decision of that business. But because, since an almost similar cause concerns that same archdeacon, he would appear excessively favorable to the other party, substituting you, son dean, in place of that archdeacon, *through apostolic writings we command your discretion* that, notwithstanding the earlier letters *obtained before the monk's arrival*, you proceed in the cause, reason leading the way.

Chapter XIX

Latin source headnote: If judges take cognizance of the principal matter and preliminary exceptions at the same time, or receive witnesses concerning the principal matter before issue has been joined, appeal is lawfully taken from them.

Honorius III, to the Archdeacon of Reims and the Dean of Brim in the diocese of Cologne.

A petition presented to us by *our beloved son* R., elect of Verdun, declared that, when the proctors of himself and of H. the archdeacon and certain canons of Verdun, his adversaries, had *formerly* approached our hearing concerning the fact of his election, *we, having heard the petition of the opposing party and the things proposed by it,* directed our letters under a certain form to our venerable brother the Bishop of Paris and his co-judges, containing among other things that, after summoning those who were to be summoned, they should inquire into the truth concerning the matters proposed and other things touching the business, *compelling the witnesses who happened to be named to give testimony according to the customary form, and fixing for the parties a suitable term on which they were to present themselves before us, personally or through suitable proctors, to receive a just sentence.*

Therefore, after the parties had been cited, no proceeding occurred on the first day. *And when ten persons from the opposing party appeared at the second term and were asked in court whether they would oppose the elect, seven of them being unwilling to answer, the remaining three offered themselves to act.* But when the same elect objected by way of exception that some of those who were proceeding against him were involved in conspiracy and others in excommunication, offering to prove this, the aforesaid judges ruled interlocutorily that they would inquire simultaneously into these matters and the principal business, *concerning which it appeared to the same judges that inquiry should be made*. They refused, as though they were not judges but investigators, to admit the proofs of the same elect concerning his said exceptions; instead, perverting the order of law, they intended to inquire personally and simultaneously into the aforesaid exceptions and the principal business, and they proceeded even to the reception of witnesses although issue had not yet been joined concerning that business. For this reason the aforesaid elect appealed to our hearing, *humbly petitioning that, since the letters obtained for those judges import not an inquiry but a commission, as appears from their contents, we deign to revoke as void what was done by them after his appeal and to commit the cause to another.*

Therefore, because the business was delegated not by way of inquiry but of commission, *through apostolic writings we command your discretion* that, *meeting in a suitable place convenient for the parties*, if it is established that appeal was taken on account of the said grievances or any of them, after revoking as void whatever you find attempted after such an appeal, you proceed in the cause itself according to the contents of the earlier letters, *with appeal removed*, reason leading the way, *without the loss of delay*.

Chapter XX

Latin source headnote: Notwithstanding the passage of three years, a delegate can proceed in a cause committed to him.

The same, to Master Tancred, Canon of Bologna.

Our venerable brother the Archbishop of Ravenna proposed before us that, although the decision of the cause pending between him *on one side* and the community of Cervia *on the other* concerning jurisdiction over the city of Cervia and certain other articles had been prolonged for three years through their subterfuges and cavils, *and at last, after joinder of issue and various commissions, we commanded you to remit it to us sufficiently instructed*, the said people of Cervia, asserting that the pendency of the judgment had expired through the passage of three years, refused to answer under your examination. *Therefore, unwilling that the decision of the same cause be prolonged any further, by authority of the present writings* we command that, notwithstanding an exception of this kind, you proceed in that business, *with appeal removed and reason leading the way*, according to the form handed to you. [*Given at the Lateran, on the tenth day before the Kalends of May, in the eighth year of our pontificate,* 1224.]

Chapter XXI

Latin source headnote: A claimant who prevails in a possessory action before the judge of the thing is not bound to answer before that judge concerning ownership if he belongs entirely to another forum. This is what it says, and it is a notable case.

The same, to the Bishop and Masters T. and B. of Prato, residing at Bologna.

The Abbot and Convent of Saint Mary of Florence formerly signified to us that the Florentine podestà promulgated a definitive sentence in their favor against the community of the castle of Signa concerning possession, or quasi-possession, of the right of electing a rector there, which they said belonged to them. But afterward, *when that community was unwilling to receive the nobleman B. Vinci-Werra, whom they had elected rector of the aforesaid castle, the aforesaid podestà, although frequently requested, not only took no care to put his sentence into execution and compel the community itself to receive the said nobleman as rector, but did not even permit that community to be constrained to this by the faithful men of their monastery; rather,* the podestà *improperly* compelled the aforesaid abbot and convent to answer the aforesaid community in a secular judgment concerning ownership, or quasi-ownership, of the said right.

Hence, *through our letters* we enjoined upon you that, if it was so, *through ecclesiastical censures* you were to compel that community to admit as rector the person elected by the same monks; afterward you were to hear what the parties considered should be proposed concerning ownership, or quasi-ownership, of the said right, *and decide the cause as would be just, notwithstanding any statute contrary to ecclesiastical liberty, or the fact that the aforesaid abbot and convent were compelled to join issue concerning this matter in a secular judgment. Recently, however, we learned from the report of the abbot and convent that, when knowledge of the letters obtained from us concerning this matter had reached that community, its syndic, after exhibiting before the judge of the podestà the oath against calumny, caused the abbot to be cited to undergo a similar oath before him, so that by this the same abbot would be understood to have renounced the apostolic letters by the act itself, or, if he refused to do this, would be held as convicted. And when you had cited the aforesaid community to your presence frequently and peremptorily, its syndic declaring that he wished to propose dilatory exceptions, you established a term on which he was to do this or answer concerning the principal business.*

But the other party, by way of exception, proposed among other things that it was not then bound by law to answer before you because the time was one of judicial vacation on account of the vintage. The syndic of the monastery answered that this was proposed maliciously so that, with the cause prolonged, the term of the elect's governance might elapse uselessly. *This appeared from the fact that the abbot was prohibited by a messenger of the podestà from suing the same community in judgment outside the Florentine district. For this reason the aforementioned abbot and convent humbly petitioned that we deign to oppose malices of this kind. Therefore we command your discretion that, absolving as a precaution, with the obstacle of appeal removed, both the same syndic and the monks of that monastery whose testimony he wished to use, if it should happen that excommunication is objected against them to impede the progress of the cause, lest under such a pretext they be capable of being excluded from suing or testifying,* notwithstanding this, you proceed in the business, *according to the form of the mandate received,* reason leading the way, *imposing the due end upon the cause without the loss of delay, so fulfilling the apostolic precept that we ought not to impute to you the difficulty which is known to threaten the said monastery on account of delay.* [*Given at Rieti, on the second day before the Kalends of November, in the tenth year of our pontificate,* 1225.]

Title II: On the Competent Forum

Chapter I

Latin source headnote: A cleric ought to be sued before his own bishop.

From the Council of Chalcedon.

If any cleric has a business against a cleric, let him not forsake his own bishop *and run to secular judgments*, but let the action first be ventilated before him; or *at least*, with the counsel of that *bishop*, they shall obtain judgment before others whom both parties choose. *But if anyone acts contrary to these things, he shall be subject to canonical corrections.*

Chapter II

Latin source headnote: If a secular judge constrains or condemns a cleric on his own authority, he ought to be excommunicated.

From the Council of Paris.

Let no judge presume on his own authority to constrain or condemn a priest, a deacon, any cleric, or the lesser ministers of the Church without the permission of the pontiff. But if he does so, let him be separated from the Church of God, upon which he is known to inflict injury, until, recognizing his guilt, he makes amends.

Textual note: Both the Latin Library and Friedberg-derived e-texts print *Nullus iudicium* at the beginning of the decretal. The syntax and the source headnote require a personal subject; the translation therefore renders the evident sense "no judge."

Chapter III

Latin source headnote: By reason of the thing concerning which the action is brought, a person obtains a forum where the thing is. It is commonly summarized thus.

From the African Council.

Certainly, if the bishops between whom a cause is pending are from different provinces, let the primate in whose province the place concerning which they contend is situated appoint the judges. *But if, etc.* (cf. c. 1, On Arbitrators, I.43.)

Chapter IV

Latin source headnote: A bishop recused as suspect, whose grounds for suspicion are notorious, can appoint a delegate who is not suspect to the parties, whose sentence he will be able personally to put into execution.

Gregory, to Boniface, Defender of Corsica.

If anyone has a cause against a cleric, let him approach the cleric's bishop. If the bishop is recused as suspect, let an executor [*or*] be appointed by him; or, if *even* this is rejected by the claimant, one is to be appointed by the same bishop who shall compel the parties to choose for themselves judges by mutual consent. Whatever is defined by them is by every means to be completed through the bishop's solicitude, the law having been observed, [*so that there may be no cause by which they can weary themselves with litigation. Given in the month of August, in the fourth indiction,* 601.]

Chapter V

Latin source headnote: A layman can be sued before an ecclesiastical judge concerning a thing belonging to a church or cleric; but if he plausibly denies that the thing belongs to the church or cleric, he is sued before his own judge in order to decline ecclesiastical jurisdiction.

Alexander III.

If *a priest or* another *cleric* proceeds against a layman concerning his own things or those of the church, and the layman asserts that those things are not those *of the church, priest,* or cleric *who proceeds against him concerning them*, but are his own, *that layman* ought, by rigor of law, to be drawn *concerning this* before the judge of the forum, since a claimant ought *always* to follow the defendant's forum, although in many regions it is otherwise by custom.

Chapter VI

Latin source headnote: If a feudal question exists between a cleric and a layman, the lord of the fief shall take cognizance; but if he is negligent, a papal delegate shall take cognizance, even one appointed before the negligence. This is what it says according to the reading of the gloss.

The same.

From the representation transmitted to us by B., C., and W., knights of your church, we understood that, when R. de Cassaville had drawn them into a cause concerning a certain possession before *our venerable brother* the Bishop of Troyes, the nobleman de Campis, their lord, [*from whom they held the possessions,*] prohibited *them* under the obligation of fealty from answering concerning a secular fief in an ecclesiastical judgment. *Therefore the aforesaid bishop promulgated a sentence of excommunication against them as contumacious, etc.* (*And below:*) [*We command that you absolve the aforesaid knights from excommunication, contradiction and appeal ceasing, etc.*] (*And below:*) *Thereafter* you are to command that the cause be terminated through the lord of the fief; and if he has maliciously delayed *anything*, you are to impose the due end upon it, *with the obstacle of appeal removed*.

Chapter VII

Latin source headnote: A feudal question ought to be terminated through the lord of the fief, whether secular or ecclesiastical, even if the vassals are clerics; and, if several lords are claimed, one cannot take cognizance—especially in the other's absence—whether the fief belongs to him. This is what it says according to the more notable reading.

The same.

But because a question was moved against the *same* provost concerning certain fiefs, we establish that, once a bishop has been consecrated in that church *who possesses full authority and power*, cognizance concerning those fiefs is to be taken under his judgment if they pertain to ecclesiastical cognizance; otherwise *the question itself* is to be left to the imperial pleasure, as shall be just.

Chapter VIII

Latin source headnote: Malefactors against churches can be sued in either forum.

Lucius III.

Since it is a general rule that the claimant follows the defendant's forum, *it is fitting that plunderers first be sued before secular judges. But if they treat the exhibition of justice with contempt, or if the judges are negligent for any cause whatsoever, because they are to be judged sacrilegious by the Church, you will be able to exercise ecclesiastical censure against them concerning that crime.* But because secular judges are frequently remiss in exhibiting justice to ecclesiastical persons in judgment, *it has now been introduced by custom* in favor of the Church that the rectors of venerable places can sue their malefactors, who are to be judged sacrilegious, before whichever judge they prefer.

Chapter IX

Latin source headnote: The causes of clerics are terminated according to the laws, not according to the customs of laymen. Or thus: in a place under the temporal jurisdiction of the Church, the causes of clerics are to be terminated according to canon law. This is what it says according to the gloss, and each summary admits of qualification.

Celestine III.

That to clerics—(*And below:*) *No bishop or cleric is to be drawn to secular judgments. For they have their own judges, and they have nothing in common with public laws. Pope Boniface, moreover, and Gelasius and many other of our predecessors, agreeing with the more ancient councils—as is clearly apparent to men skilled in both laws—issued the same provision in sacred constitutions. Therefore, induced by this reason, through apostolic writings* we command that, if clerics residing at Paris have any pecuniary causes against others, or others against them, you decide them *with appeal removed* according to canon law, *and do not permit custom to prevail over written law*.

Chapter X

Latin source headnote: A layman cannot sue a layman concerning a civil matter before an ecclesiastical judge unless secular justice is lacking or custom demands it.

Innocent III, to the Bishop of Vercelli.

Although, by reason of the *office of service we have assumed, we are debtors to all in justice, nevertheless it is fitting for us to provide for certain persons in their own right in such a way that we do not appear to do injury to others, and that—God forbid—matter of scandal is not taken from the source from which it ought to be stilled by provident consideration. You should know that we have learned from the representation of our beloved sons, the consuls and commune of Vercelli, that, although they wish to exhibit the fullness of justice to every complainant according to approved custom concerning each question moved against them before the consuls of justice, certain persons, in order to nullify their jurisdiction and weary them with labors and expenses, obtain apostolic letters concerning matters that do not touch ecclesiastical judgment. Thus, in addition to weakening the jurisdiction of the consuls, they compel them to labor in many ways. Therefore, wishing to consult their advantage in such a way that we do not allow the justice of others to perish, through apostolic writings* we command your fraternity that, whenever it should happen that *such* letters are obtained from the Apostolic See by laymen of Vercelli concerning matters, especially those that touch the secular forum, you decree them by our authority null and void, with the obstacle of appeal removed, provided that the *said* consuls and commune exhibit complete justice in secular judgment to those complaining against them.

Nevertheless, let it be lawful for those who have considered that they must contend in this way under the same consuls, if they feel themselves aggrieved in anything, to appeal to your hearing, as has been observed hitherto, or to ours if they prefer—especially at this time when, the empire being vacant, those who are oppressed by superiors in their justice cannot have recourse to a secular judge. But if the consuls of justice have been recused as deservedly suspect, let the cause of suspicion be conducted before arbitrators elected in common; and if it is proved to be just, let recourse be had to you or to us for justice, as is expressed above. [*Given at Ferentino, on the second day before the Kalends of June, in the ninth year of our pontificate,* 1206.]

Chapter XI

Latin source headnote: A widow cannot sue a layman before an ecclesiastical judge except concerning an ecclesiastical cause or in the absence of a secular judge.

The same, to the Archdeacon and Treasurer of Tours.

It was intimated to our ears from the tenor of the letters of *the nobleman G.*, Count of Brittany, that, when we had committed to you *and G. of good memory, master of the schools of Saint Martin,* the cause known to be conducted between the noblewoman F. and *the nobleman* I. de Meduano concerning her inheritance, to be terminated *with a due end*, the same count commanded that woman—since both she and the aforesaid I. belonged to his forum—to refer the *cause* to him, promising her that *in his court* he would cause the fullness of justice to be exhibited to her, *taking care nevertheless to intimate to you that a business of this kind ought to be terminated in his court. But you and the aforesaid woman, wholly unwilling to obey him, strive to proceed in the cause and less than reasonably to take his jurisdiction from him. Hence he humbly petitioned us to deign to remit the cause to him, to whom it specially belongs.*

Therefore, considering that we are debtors to widows in justice in such a way that we ought not to do injustice to others, *through apostolic writings we command your discretion* that, unless the cause is of a kind known to pertain to an ecclesiastical judge, you take care to suspend action upon it, provided that she can obtain her justice through a secular judge; otherwise, notwithstanding his contradiction, you are to terminate the cause, *according to the form handed to you in other letters*, reason leading the way. [*Given at Rome, at Saint Peter's, on the Kalends of January, in the eighth year of our pontificate,* 1205.]

Chapter XII

Latin source headnote: A cleric cannot constitute a layman as judge for himself, even if his own oath and the adversary's consent are added.

The same, to the Archbishop of Pisa.

If with diligence—*And below:* [cf. c. 17, On Prescriptions, II.26.] *Concerning this, however, we wonder greatly and are moved that, although we consider you a provident and discreet man, and although, according to the obligation of the pontifical office, the statutes of the holy Fathers ought not to be unknown to you, and you are known to have an abundance of jurists,* you asserted that until these times you had held, *and held as certain*, that it was lawful for *any* cleric to renounce his right, at least in temporal causes, and to constitute a layman as judge for himself—especially where the adversary's will was added—and *by this you tacitly imply that you were reasonably reproved because you answered that an oath interposed concerning this matter ought to be kept*, forgetful of *that* constitution by which it is provided that an agreement of private persons in no way derogates from public law.

Therefore, since this law was specially promulgated at the Councils of Milevis and Carthage—that clerics are not to draw clerics, after abandoning their own bishop, to public judgments, otherwise they lose the cause and are held outside communion; and that bishops as well as deacons, or any clerics, in a criminal or civil business, if they wish to clear themselves in public judgments after abandoning ecclesiastical judgment, even if sentence is rendered for them, lose their place, and this in a criminal action, but in a civil action lose what they have recovered if they prefer to retain their place—it is manifestly plain that they cannot agree voluntarily, any more than involuntarily, to undergo secular judgments. For this is not a personal benefit capable of being renounced, but one publicly [*and generally*] granted rather to the whole ecclesiastical college, which an agreement of private persons cannot derogate. Nor could an oath lawfully be observed which is framed by unlawful agreements contrary to canonical statutes. [*Concerning the other matter, etc.* (cf. c. 17, On Prescriptions, II.26.) *Given at Rome, at Saint Peter's, on the second day before the Nones of May, in the ninth year of our pontificate,* 1206.]

Chapter XIII

Latin source headnote: Clerics are to be sued concerning their excesses before their own bishop, not before those whom they serve, unless custom or privilege introduces otherwise.

The same, to the Bishop of Beauvais.

Since it sometimes happens—(*And below:* [cf. c. 28, On Oaths, II.24.]) You further petitioned whether, when certain clerics assigned to the service of the Chapter of Beauvais or of other clerics of your diocese are proceeded against concerning excesses, they are to be compelled to answer the complainants before you or rather before those whom they serve, since those persons contend that they have jurisdiction of this kind, although they cannot excommunicate the clerics or otherwise coerce them. Concerning this, *we answer your fraternity* in this way: the complainants ought to have recourse concerning such matters to you, as the *ordinary judge*, especially if the clerics are proceeded against concerning *crimes* which they are known to have committed in your diocese, unless perhaps those whom the offending clerics serve are able to claim jurisdiction of this kind for themselves by an

indulgence or special custom. [*Given at the Lateran, on the sixteenth day before the Kalends of January, in the thirteenth year of our pontificate,* 1210.]

Chapter XIV

Latin source headnote: The bishop of the place of the delict condemns a cleric concerning the delict, but does not deprive him of a benefice situated elsewhere; rather, the bishop of the benefice will deprive him, as though executing the condemnation of the judge of the delict. This is what it says according to one interpretation. According to another interpretation, this is what it says: the bishop of the place of the delict condemns a cleric concerning the delict by depriving him of a benefice situated elsewhere; the real execution is carried out by the bishop of the benefice.

The same.

You petitioned to be instructed by the Apostolic See whether a priest who has a church in one diocese and resides in it, but has a domicile by reason of patrimony in another, and who commits an offense there, ought to be judged for the delict committed there by the one in whose diocese he has the patrimony, especially in causes that demand deprivation of his office or benefice. To this we answer briefly that sentence can be promulgated against him by the bishop in whose diocese he committed the offense. But as regards the benefice, the execution of a *sentence of this kind* is to be carried out by the one in whose diocese he holds it. *You asked, etc.* (cf. c. 21, On Homicide, V.12.) [*Given at the Lateran, on the third day before the Kalends of May, in the sixteenth year of our pontificate,* 1213.]

Chapter XV

Latin source headnote: A person deserving compassion can sue a layman before an ecclesiastical judge by the interdict *unde vi*, even if the thing taken away is said to be feudal.

Honorius III, to the Archbishop, Dean, and Archdeacon of Tours.

It was proposed *before us* on behalf of *our dearest daughter in Christ* B., formerly *illustrious* Queen of England, that, when by authority of Pope John of good memory, our predecessor, she had drawn before you into a cause *concerning this matter* the nobleman G. *de Guerchia*, holder of the castle of Segré, which belonged to her by reason of dower and of which she had been despoiled by him or his accomplices contrary to justice, the said nobleman proposed by way of exception that the apostolic letters were not valid because the castle of La Guerche, where his principal domicile was situated, was in the diocese of Rennes, which was more than two days' journeys distant from Tours; *hence, according to the statute of the general council, he could not be drawn there.*

But it was replied on the queen's behalf that the same nobleman could sufficiently be sued at Tours *according to the statute of the general council*, since he was situated not only in the diocese of Rennes but also in the diocese of Angers, because he had several castles and revenues there, and the castle concerning which the question was pending was in that same diocese, which was by no means more than twelve leagues distant from Tours. He also added that, because the said queen ought to have pursued her right before the lord of the fief, the apostolic letters were not valid, since they did not mention that the lord of the fief had been requested and had been negligent or remiss in exhibiting justice *to her*. He further submitted that those letters had been obtained by the expression of a falsehood, because it had been suggested that the castle belonged to that queen by reason of dower,

although neither at the beginning nor during the marriage had it been assigned to her by her husband as a gift on account of marriage.

To this it was answered on behalf of the queen that a despoiled widow could sue the despoiler or holder of the thing before an ecclesiastical judge without first requesting the lord of the fief, since it belongs to that judge to defend widows. *Nor does it stand in the way that the castle had not been assigned to her by her husband, since King John of England of illustrious memory, the heir and successor of her husband, granted the aforesaid castle to her in exchange for other dower property, and she had long possessed it peacefully as dower. To these things it was replied on behalf of the nobleman that the aforesaid king had not been the heir of King Richard or the lord of Anjou, but rather the plunderer and invader of that castle, and thus could not transfer to the queen a right which he by no means possessed. To this the queen's party answered that an exception of this kind was not valid against the rescript and ought not to have a place in the possessory action which she was bringing against the said nobleman. Hence, lending your ears to frivolous exceptions of this kind, you have until now delayed proceeding in the principal business, to the queen's considerable grievance and loss.*

But we, wishing an end to be imposed upon lawsuits, *command your discretion* that, if it is established to you that the said nobleman has land and a dwelling in the diocese of Angers, in which he is sometimes accustomed to reside, that the same diocese is not more than two days' journeys distant from Tours, and that the thing in litigation is situated in that diocese, then, notwithstanding the other exceptions—which appear to have a place in the petitory action rather than in the possessory action which the queen was bringing against the same nobleman—you proceed in that business according to the contents of the earlier letters, *with the obstacle of every contradiction and appeal removed,* reason leading the way, *so fulfilling the apostolic precept that the same queen is not compelled through your failure to labor further in coming to us, and that you cannot be reproved for negligence.* [*Given at the Lateran, on the sixteenth day before the Kalends of February, in the first year of our pontificate,* 1217.]

Chapter XVI

Latin source headnote: Laymen who usurp ecclesiastical rights are compelled by an ecclesiastical judge as sacrilegious persons.

Gregory IX, to Brother Palmerius, Canon of the Holy Trinity.

[Our venerable brother] the Bishop of Bologna complained to us that the podestà and commune of Bologna presume violently to usurp the temporal jurisdiction which belongs by full right to the church of Bologna in [Saint John in Persiceto, Unciola, Massumatico, Poggio, Duliolo, Castel del Vescovo, and] certain [other] castles and villages, and in the quasi-possession of which it is known to have been and to be. [*They caused a certain man who had perpetrated homicide at the said castle of Saint John to be exhibited to them by the rector of that castle so that he might be punished by them; they still hold him in chains and refuse to return him. Hence, through our letters we commanded them to desist from molesting the bishop, to restore the murderer to the bishop without any difficulty, and freely to permit him to exercise the aforesaid jurisdiction in the said places, while appearing before us by the feast of All Saints then next past to do and receive what the order of law dictated if they proposed that they possessed any jurisdiction in the said castles and villages. Treating this with contempt, as is said, although diligently admonished, they neither restored the aforesaid malefactor to him nor permitted the bishop freely to exercise this jurisdiction in those places, nor sent a suitable representative to us. Rather, heaping sin upon sin, after the messengers of both parties had approached the Apostolic See, the said podestà and commune sent certain persons on their behalf to investigate and punish a certain crime*

perpetrated in the territory of Duliolo, which belonged to the jurisdiction of that church, concerning which an inquiry had been made through the messengers of the said bishop and pledges and other securities had been accepted from the malefactors. For this reason the messengers of the same bishop humbly petitioned us that we ought to provide concerning these matters for the indemnity of the church of Bologna.]

But since it is very unjust [*and an enormous sacrilege*] that things conferred upon venerable churches for the remedy of sins, or left to them, or otherwise acquired by them in just ways, [*by faithful and Catholic men, by whom it is fitting that they be preserved,*] be applied to other uses, the invaders of those things are therefore deservedly, as sacrilegious persons, [*unless they restore them, through the rectors of the churches, since sacrilege is an ecclesiastical crime,*] to be subjected to anathema until suitable satisfaction. [*It is also known to have been introduced in favor of churches that the rectors of venerable places can sue their malefactors before whichever judge they prefer. But, an exception to the forum having been opposed through your messengers, it was urgently petitioned by them that, since a claimant regularly ought to follow the defendant's forum, we should leave a question of this kind to secular judgment.*]

[*Therefore, after diligent deliberation concerning these matters with our brothers, with paternal sweetness we admonish, entreat, and beseech them, adjuring them by the salvation of their souls and calling God to witness, that, since in this matter it is far more glorious to be conquered than to conquer, they not refuse to receive saving medicine, but, granting us these things by gratuitous liberality in hope of eternal reward, render due satisfaction to God and the Church concerning the aforesaid matters. For with solicitous affection we desire the salvation of the citizens of their city, devoted to the Roman Church, taking care to bind what is broken and bring back what is cast away, and desiring to recall them through our patience to penance. Therefore, unwilling to dissemble the affliction of the same church, to the peril of the said podestà and commune which is involved in it, lest we act contrary to the obligation of our office, knowing that we ought to obey God rather than men, through apostolic writings*] we command your discretion that, if the aforesaid matters are established to you, after [*your diligent*] admonition has first been given, you compel them through ecclesiastical censure, with appeal removed, to cease from conduct of this kind and to make satisfaction for past damages and injuries. [*The witnesses, etc. Given at the Lateran, on the sixth day before the Kalends of February, in the fourth year of our pontificate,* 1230.]

Textual note: The clause *Civitatis enim suorum ecclesiae Romanae devotae* is grammatically difficult in both e-texts. The translation follows the contextual sense, taking it to refer to the citizens and their city as devoted to the Roman Church.

Chapter XVII

Latin source headnote: One privileged not to be bound to answer except in a certain place can be sued there, and also where he has his domicile, if he promises to answer or pay in another place. According to Johannes Andreae.

The same, to the Bishop of Durham.

Our beloved sons I. and A., Roman citizens, showed us by their petition that, when they had obtained letters for the Abbot of Saint Geneviève of Paris against R., your predecessor, concerning a certain sum of money, you caused it to be proposed that it has been granted by the Apostolic See to all Englishmen that they cannot be sued in pecuniary causes on this side of the sea, on account of which the same abbot did not proceed in the business. But because, even if such a privilege had been granted, it nevertheless would not benefit those who promised their adversaries to answer or pay in a certain place, since they can be sued both there and where they have their domicile, we command

that you satisfy them, as you are bound, concerning the money itself together with just and moderate expenses and suitable satisfaction for damages, with usury ceasing altogether. Otherwise, through our letters we command the same abbot to proceed without the loss of delay in the business committed to him according to the tenor of our prior mandate, notwithstanding the indulgence proposed on your behalf.

Chapter XVIII

Latin source headnote: Although laymen can prorogate the jurisdiction of one who is not their judge, clerics nevertheless cannot do so unless the consent of the diocesan bishop is added and the judge whose jurisdiction they wish to prorogate is an ecclesiastical person.

The same, to the Abbot of Troyes.

You signified to us that the cleric P., at the petition of the merchant C., subjected himself to your jurisdiction if he did not satisfy him concerning borrowed money by the term now elapsed. (*And below:*) We answer your inquiry in this way: although the consent of private persons can constitute as their own judge one who is known to preside over a jurisdiction, nevertheless clerics cannot consent to one who is not their judge unless perhaps he is an ecclesiastical person and the will of the diocesan bishop is added.

Chapter XIX

Latin source headnote: One lawfully cited is bound to prosecute the cause before the judge who cited him, notwithstanding that after the citation he changed his forum.

The same.

You proposed to us that a certain subject of yours, lawfully cited by you to a cause at the petition of a certain adversary of his, intends to decline your judgment because he afterward began to belong to another's jurisdiction. But we do not believe it doubtful to your prudence that in the aforesaid cause he has no right to recall the forum, since he has, as it were, already been forestalled by the other party.

Chapter XX

Latin source headnote: Every cleric can be sued in the Roman curia, although otherwise he does not specifically obtain a forum there; nevertheless, for cause he has the right to be sent back home.

The same.

Although by reason of delict, contract, domicile, or the thing concerning which a cause is moved against a possessor—by which grounds a person regularly obtains a forum—your bishop had not been sued at the Apostolic See, nevertheless, because that same See is the mother and mistress of all churches, he could rightly be compelled to answer his adversaries there, unless he had come for another just and necessary cause; and if he had alleged that cause at the time, his right to be sent back home would have been preserved.

Title III: On the Offering of the Complaint

Chapter I

Latin source headnote: The claimant is bound to present the complaint in writing. Or thus: the judge ought not to admit a claimant to litigate unless he first offers the complaint in writing. This is what it says in other words.

From the council at Saint-Médard.

Bishop Ignarus said: "Do you have a written complaint of protest or petition, *as ecclesiastical tradition requires?"* But they answered that they had no complaint at hand. Bishop Ignarus said: *"The authority of ecclesiastical laws [is such that in causes concerning transactions it always requires writing, to such an extent that one who approaches the sacred font is commanded to give his name; one who is advanced to the highest priesthood is elected by a decree confirmed by the hands of all. One ordained, moreover, is commanded to receive letters from those who ordained him. One who is also separated from ecclesiastical fellowship by any excess is either received or cast out by a written document. But one who is accused, excommunicated, or reconciled is commanded to be accused or reconciled through writing. And thus in other matters of this kind writing is required to such an extent that, as blessed Gregory writes in his memorandum to John the defender, taking from the Roman laws, a sentence pronounced without writing does not deserve even to have the name of a sentence."]*

"Therefore, brothers [*and sons,*] you must, according to ecclesiastical authority, declare your protest in the sequence of a written complaint and present it to the [*sacred*] synod, confirmed by your hands, so that an answer can then be made to you *fittingly and* canonically." And then those brothers, drawing up a written complaint [*and subscribing their names to it*], presented it to *Hincmar* [*the bishop, etc.*]

Chapter II

Latin source headnote: When a real action is brought, it is not sufficient that the thing be sought generally; rather, it ought to be specified in such a way that obscurity and equivocation are avoided.

Innocent III.

It was declared to our apostolate by the representation of the brothers T. and R. that, when a cause had been conducted before *our beloved sons the Abbot and Prior of Saint Bartholomew of Noyon,* judges delegated *by the Apostolic See,* between them on one side and V. *Turpis de Athechi and his sisters of the diocese of Soissons* on the other concerning a certain piece of land, after a complaint had been offered to them, the same T. and R., since they had several lands, petitioned the judges that the land concerning which the question was pending be shown to them. When the others refused to do this *and were unwilling to define by sentence whether this ought to be granted to them, those brothers appealed from the manifest grievance* to our hearing. Therefore, *through apostolic writings we command your discretion* that, if it is so, *you,* after revoking to its due state whatever you learn to have been attempted after an appeal of this kind, etc.

Chapter III

Latin source headnote: A defendant is not bound to answer a complaint in a personal action if the ground of the claim is not expressed.

Gregory IX, to the Archpriest of Cittanova and M., Canon of Culm.

Our beloved sons, the brothers of the church of Saint Mary de Hispida, showed us by their petition that, when the Prior and Convent of Saint Mary ad Carceres sued them concerning a certain sum of money before the Prior of the Holy Trinity of Verona by apostolic authority, it was proposed on their behalf by way of exception that, since the said prior and convent were unwilling to express in the complaint presented for the action why the said money was owed to them, they were in no way bound to answer concerning it; and because the said judge refused to admit an exception of this kind, they appealed to our hearing. Therefore we command that, if it is so, after revoking as void, etc.

Title IV: On Mutual Claims

Chapter I

Latin source headnote: A judge, even a delegated one, compels the claimant to answer the defendant in a cause of counterclaim, and he shall hear both causes together in successive order and terminate them by one sentence. This is what it says.

Alexander III, to the Bishop of Volterra and the Abbot of Spongia.

We learned from *your letters that our beloved sons the Abbot and Brothers of the monastery of Maturum are prepared to undergo your examination concerning the questions which the plebanus and clerics of Maturum propose against them if the latter ought immediately to answer concerning their questions. But* because the order of reason requires that the plebanus and clerics of Maturum ought to answer the abbot and brothers of the monastery of Maturum in your presence concerning the things which they propose against them, since they petition that justice be exhibited to them by those persons before you as delegates of the Apostolic See, *through apostolic writings we command your discretion, by way of precept,* that, after the action of the plebanus and clerics has been proposed and an answer made, admonition having first been given, you compel them immediately to answer the said abbot and brothers before you concerning their own questions; and that *you*, afterward hearing in turn the arguments *and allegations* of the parties *more diligently*, terminate the business of both by agreement or judgment.

Chapter II

Latin source headnote: The manner of proceeding given by rescript in the cause of the original claim is understood to be repeated in the cause of the counterclaim.

Celestine III, to the Dean of Rouen.

We *follow your prudence with due thanksgiving of praise because, in the manner of a prudent man, you consider that the Apostolic See is to be consulted upon points of law concerning which you sometimes doubt,* [*to which, indeed, the ancient Fathers established that all difficult questions and causes should fittingly be referred.*] You consulted us whether, when a cause is committed with appeal removed and the defendant brings a counterclaim against the claimant before the same judge *or judges—which can lawfully be done under the constitution of both canon and civil law—and the claimant interposes the obstacle of appeal concerning the counterclaim*, deference is to be shown to an appeal of this kind.

We hold that, since *in this case* the condition *or cause* of the claimant and defendant is the same, and each ought to be assessed by one and the same law concerning the remedy of appeal, *no deference is to be shown to an appeal interposed in this manner. For we have learned, by the testimony of Christ himself, who is*

Truth, that all things which people wish others to do to them they ought also to do to others. Nor does the jurist dissent from this sentence, because, besides the Authentic which begins "And consequently," in which this is expressly contained concerning the making of a counterclaim, it is established elsewhere that a person is to use the same law which he has determined should be established against another. Therefore, just as the claimant desires justice to be done to him according to the mandator's rescript with appeal removed, in the same manner he ought to answer in justice the one bringing a counterclaim against him. [*Secondly you ask, etc.* (cf. c. 41, On Appeals, II.28.) *Given at the Lateran, on the fifteenth day before the Kalends of July, in the third year of our pontificate,* 1193.]

Title V: On Joinder of Issue

Sole Chapter

Latin source headnote: Joinder of issue occurs not through positions and answers but through a petition proposed in court and the answer that follows it; when it is omitted, the proceedings are null.

Gregory IX, to the Abbot of Saint John in the Vineyards.

Formerly, matter for a question arose between the Bishop of Noyon on one side and the Chapter of the Church of Saint-Quentin on the other concerning certain injuries, sentences of excommunication, and certain other articles. (*And below:*) The judges, after certain positions had been made and answers given to them, and having also heard what the parties wished to propose before them, remitted that cause to apostolic examination. Therefore, when the proctors of the parties had been established in our presence for this reason, although positions and answers had been made on each side before the aforesaid judges concerning several articles, nevertheless, because we did not find that joinder of issue had occurred—since joinder of issue occurs not through positions and answers to them, but through a petition proposed in court and the answer that follows it—we judged, with the counsel of our brothers, that their proceedings were to be declared void.

Title VI: That Before Issue Has Been Joined No Proceeding Is to Be Had to the Reception of Witnesses or to Definitive Sentence

Chapter I

Latin source headnote: If an action concerning adultery is brought for separation from bed, and before joinder of issue the defendant is contumacious, he can be excommunicated; but witnesses cannot be received, nor can the cause be decided.

Innocent III, to the Abbot of Saint Proculus and L. the Canon.

For this purpose God *established the governance of the whole Church in the Apostolic See,* [*so that, because according to Holy Scripture God made man upright, but man involved himself in infinite questions, difficult knots of questions may be referred to it to be dissolved by its upright judgment.*] *It came to the knowledge of our apostolate through the representation of your letters that,* when the cause pending between R. and B. his wife had been committed to you by apostolic authority, the proctor of the same R. was unwilling to answer the wife's complaint, by which she accused her husband of adultery for separation from bed and so that she might recover her dowry, until his advocate should come, and he sought adjournments.

When, by frequently seeking adjournments of this kind, he appeared to mock you, *you received the woman's witnesses after taking counsel*. At last the *proctor*, approaching your presence, said that he was prepared to answer; but on the appointed day, when it was believed that he would answer the complaint *mentioned above*, he first petitioned *on the husband's behalf* that the wife be restored, appealing lest it be done otherwise. But because the woman said that she held her husband suspect—*both because in his house she had been compelled to confess that she had committed adultery with several persons and because he publicly kept a prostitute*—and the same proctor neither gave security for the woman's safety nor afterward took care to present himself before you, you endeavored *again* to receive the woman's witnesses, *and, after the attestations were published, diligently heard what was alleged in her name.*

But because, when you treated with jurists concerning the rendering of sentence, you found different counsels from different persons—some saying that simple deference was to be shown to the appeal, others that deference was not to be shown to it, and some also asserting that the appeal did not hold at all, since the woman was not to be restored to a husband held suspect unless sufficient security for her safety had been given—you wished to consult us, amid such variety, concerning how one was to proceed in this business. Therefore, *with the counsel of our brothers*, we answer your consultation in this way: although the judicial order is to be observed in other controversies and is not observed in every respect in matrimonial causes, nevertheless, because in the present business the action concerns not the bond of marriage but the crime of adultery, through which separation of the marriage, not union, is intended, and because witnesses were received and the attestations even published before issue was joined, whether or not deference should have been shown to the appeal, no proceeding is to be had to definitive sentence. The aforesaid R. could nevertheless have been bound by a sentence of excommunication on account of his own contumacy, or even that of his proctor if, knowing of it, he did not purge it. [*Given at Perugia, on the fifteenth day before the Kalends of October,* 1198.]

Chapter II

Latin source headnote: In a cause of restitution, sentence cannot be pronounced against a contumacious person before issue has been joined. This states the rule, comprehending every manner of summarizing it.

The same, to the Patriarch of Jerusalem and the Archbishop of Caesarea.

Approaching *our presence, our venerable brother the Bishop of Paphos presented to us letters of our venerable brothers the Bishops of Acre, Tiberias, and Beirut, containing the sentence which those bishops promulgated concerning the cause pending between our venerable brother the Archbishop of Tyre on one side and the plebanus of Saint Mark on the other. The aforesaid bishops asserted through their letters that, when they had undertaken by our mandate to terminate that cause, they summoned the parties to their presence. But the* [*aforesaid*] *plebanus was willing neither to receive their letters, in which the tenor of our mandate was expressed, nor to present himself before them; and, when cited a second time, although he had been willing to receive* [*neither their messenger*] *nor their letters, he appeared before them, alleging the causes of his earlier absence and, after inspecting the tenor of our letters and also petitioning for and receiving adjournments* [*from them*], *departed with permission, promising that he would return to them on the appointed day.*

When the Archbishop of Tyre petitioned for the benefit of restitution in the presence of the delegated judges, the plebanus of Saint Mark of Venice, against whom he was proceeding, answered nothing to the objections but appealed to our hearing. And although he had frequently been admonished *by them*

to obey the law, because his appeal did not hold—*since in our letters the obstacle of appeal had been closed to the parties, although he had been recalled to judgment through their messengers*—he nevertheless was unwilling to answer further or even to appear before them.

But the judges, *going to the city of Tyre*, when the *same* plebanus persisted in his contumacy, received the witnesses produced by the opposing party and, after the depositions had been reduced to writing, commanded the *plebanus* to approach them to object against the persons or statements of the witnesses. When he was unwilling to do this, they pronounced a sentence of excommunication against him, adjudged possession of the parochial right to the aforesaid archbishop, restored him in full *so far as lay in them*, and, *by authority of the Apostolic See*, strictly prohibited anyone from presuming to disturb the possession restored to the church of Tyre, *to contravene the apostolic institution, or to exercise parochial right at Tyre as plebanus of Saint Mark or as any other person.*

[*Moreover, they pronounced a sentence of excommunication against all those who thereafter consented to the subtraction of parochial right by that plebanus or furnished aid or assent to him in his malice, establishing the same against the plebani to be sustained (substituted?) for him thereafter. But our beloved sons, the noblemen Orso Badoer and Marino Giacomo, sent to us on behalf of the nobleman Enrico Dandolo, Doge of the Venetians, proposed in our presence that formerly, in the recovery of the eastern land, prelates of churches and secular princes granted to the Venetians by full right a third part of the city of Tyre, which they possessed for a long time without litigation. But after the death of those who had experienced in effect their fidelity, constancy, and aid in the recovery of that land, their successors, either ignorant of or ungrateful for the benefits conferred by the Venetians upon the Holy Land, improperly moved a question against them concerning the parochial right of the church of Saint Mark—which belongs by full right solely to the church of Saint Mark situated at Venice. But when the destruction of the western land supervened, they obtained letters from Clement and Celestine of good memory, our predecessors, that before the recovery of that land they should not in any way be compelled to answer anyone concerning this matter. Hence, when the said archbishop obtained letters of commission concerning it, the aforesaid plebanus, as one who held the judges suspect for certain reason—inasmuch as it was established that two of them were suffragans of the church of Tyre—and also because the letters themselves had been obtained by suppression of the truth, since no mention of the aforesaid letters was made in them, appealed to our hearing. But after an appeal had lawfully been interposed to us, the judges, before issue had been joined, pronounced a sentence of excommunication against him and all his accomplices and presumed to adjudge possession of the parochial right to the aforesaid archbishop and his church. But when he did not obey so unjust a sentence, the same archbishop despoiled his churches of their goods.*]

Therefore, since *it was established to us by inspection of the sentence that* issue had not been joined before those judges; since *from the transcript of the letters which those predecessors of ours had granted to Venice* it was manifestly apparent that the letters had been obtained by suppression of the truth; since *it did not come into doubt but rather* was manifest that two of the aforesaid judges—namely, the Bishops of Acre and Beirut—were subject to that archbishop as suffragans to their metropolitan; and since from these things it was established that the *same* plebanus had lawfully appealed, even if he had appealed less than lawfully, although the judges perhaps could have pronounced a sentence of excommunication against him on account of contumacy, they nevertheless ought not to have pronounced definitive sentence concerning the principal business before issue had been joined. Therefore, *with the counsel of our brothers*, we quashed the aforesaid sentences *rendered by those judges*—or rather declared them quashed and void—*and we will that no prejudice be inflicted through them upon the church of Saint Mark or its supporters.*

Hence we commanded the [*said*] Archbishop of Tyre to restore to the *same* church of Saint Mark [*both*] the instruments and also everything which, on the occasion of a sentence of this kind, he had occupied personally or through others, *and not to impede the Venetian church from enjoying possession of its parochial right and other dignities as it had before the sentence was rendered.* [*Therefore, your fraternity, etc. Given at the Lateran, on the Nones of April, in the third year of our pontificate,* 1200.]

Textual note: The source prints *sustinedos (substituendos?)* in the bracketed passage concerning future plebani. The translation preserves both the printed form's apparent sense and the source's conjectural alternative.

Chapter III

Latin source headnote: If, before issue has been joined, the defendant is contumacious, the claimant is placed, if possible, in possession for the sake of custody; otherwise the defendant will be excommunicated.

The same, to the Bishop of Brescia.

The devotion of your fraternity—(*And below:* [cf. c. 10, On One Who Has Known His Wife's Consanguine, IV.13.]) *You further consulted whether, if anyone cited by lawful peremptory citations is unwilling to appear, the judge ought to promulgate sentence against him before issue has been joined, so that, affected by weariness, he may at least present himself before the judge in order to appeal. To this* we have considered that your consultation should be answered in this way: if the defendant contumaciously absents himself before issue has been joined, and the cause is of such a kind that the claimant can be inducted into possession of the things sought, he is to be inducted into it for the sake of custody. But if the cause is of such a kind that he cannot be put into possession, the contumacious person *who absented himself contumaciously* is to be compelled through ecclesiastical censure to obey the law. [*Moreover, etc.* (cf. c. 20, On Prebends, III.5.) *Given at Rome, etc.,* 1206.]

Chapter IV

Latin source headnote: The reception of witnesses made against a person who is not contumacious before issue has been joined is null in a matrimonial cause.

The same, to the Abbots de Decima and Helemosio of the dioceses of Orléans and Chartres.

Approaching the Apostolic See, *our beloved son,* the nobleman G., Viscount of Benaicum, [*showed us with humble complaint that, when he had lawfully taken the noblewoman Eustachia as wife and had received two daughters from her, at last that noblewoman, at the persuasion of the enemy of the human race, withdrew from him. And when he could not obtain justice concerning this matter from our venerable brother the Bishop of Poitiers, his diocesan, at the petition of his messengers and of the same woman we considered that the cause pending between them concerning their marriage should be committed to our beloved sons the Abbot of Saint-Léger, the Dean of Saint Peter, and the Prior of Saint-Hilaire de la Celle at Poitiers. As they intimated to us through their letters, when it had been clearly established to them that the aforesaid E. had withdrawn by her own authority from her husband, by whom she had received two daughters, after taking the counsel of prudent men they decreed that the same E. ought to return to her husband, with full power reserved to her to accuse the marriage after her return if she wished. When she was unwilling to do this, they bound her by the chain of excommunication and subjected her land and household to ecclesiastical interdict.*]

[*But when we afterward commanded that sentence to be inviolably observed, as it had reasonably been rendered, until suitable satisfaction, at last the same E., at the suggestion of our venerable brother the Bishop of Angers and our beloved sons the Abbots de Granateria and de Bellofonte, obtained the delegation of that cause to our venerable brother the Bishop and our beloved son G., Archdeacon of Quimper, and Master P. de Buter, Canon of Angers, under this form: that, if it were established to them that the same woman, as the same bishop and abbots had written to us, had been unable on account of wars to approach the aforesaid judges at the place fixed for her, and that she had wished to give the opposing party safe conduct on the border of the bishoprics of Poitiers and Angers and to furnish most sufficient security that she would preserve them harmless, then, after revoking as void whatever they found rashly attempted to her prejudice after an appeal lawfully interposed to us, notwithstanding the aforesaid commission they should summon the parties before them and, after fully hearing and considering the arguments on each side, terminate the cause with a due end, appeal removed, causing what they decreed to be firmly observed through ecclesiastical censure.*]

[*But they, as we perceived was contained in their letters, after assigning the parties a term at Vouvant and afterward at Luçon, received through letters and a proctor the excuse of the same viscount, who asserted that he did not dare approach those places because his enemies held dominion there and because of the danger of death. The opposing party and the barons who were present there answered him that they had sent that viscount letters of safe conduct, together with letters of the Viscount of Thouars, Seneschal of Poitou, through a messenger. The viscount's proctor replied that he did not dare approach a place suspect to him on account of letters, but petitioned that a safe place be assigned to him and that his wife be restored. He said that, if the judges were unwilling to do this, his lord was being aggrieved; on this account he had recourse to the remedy of appeal and afterward, although requested, was unwilling to answer before the judges, asserting that they were manifestly suspect, and renewed the appeal that had been made. But the judges, believing that the appeal was not lawful and afterward learning through witnesses that sentence had been rendered against the said woman after the appeal, declared that it did not hold at all.*]

[*At last, after a peremptory term had been assigned to the parties at Pouzauges, [...] the Dean of Tours, uncle of the same viscount, offered that he would come on his behalf if safe conduct were granted him, alleging nevertheless through letters causes of suspicion against the judges: namely, that the bishop was a blood relative of the nobleman G. de Thouars, Count of Brittany, who was involving himself excessively in that woman's cause, and was subject to the power of the same count; that the archdeacon was a cleric and table-companion of the same count; and that Master P. [...] de Buter originated from the woman's land. But the judges, after afterward assigning another peremptory term to the parties, received the woman's witnesses concerning the consanguinity and, after another term had been assigned to the parties at Malleonia, caused the attestations to be published, while the viscount excused himself through his letters.*]

[*Finally, when a term had been assigned to the parties for receiving sentence, and when the woman's messengers and [...] the Archdeacon of Tours, brother of the viscount, had been established in their presence, the woman's messengers petitioning for sentence and the archdeacon seeking a term on behalf of his brother, with the counsel of prudent men they assigned the parties a term on which they ought to proceed in the cause according to the order of law. But the woman's messengers, departing contumaciously, appealed on the following day to our hearing, saying that grievance was being inflicted upon their lady because the judges had not been present at Malleonia, where they had assigned the term for rendering sentence, and because they were assigning a place outside the province, although they themselves were from the province of Tours.*]

[*When the judges deferred to the appeal, the woman's messenger, approaching the Apostolic See, proposed that, although in that cause the aforesaid judges had several times cited the same viscount by peremptory process to*

suitable places and at lawful intervals, the aforesaid woman appearing, the same viscount was unwilling to come or send a sufficient representative. They therefore received the woman's witnesses and cited the viscount again by peremptory edicts to appear before them to speak against the witnesses or their testimony. But when he did not come or send a sufficient messenger, the attestations having been published by them and the parties cited to hear sentence, the same woman, the said viscount contumaciously absenting himself, petitioned that sentence be given to her; but although frequently requested, they were unwilling to proceed to it. On account of this the woman's party, feeling that grievance threatened her, appealed to our hearing.]

[*But we, believing that the same woman was laboring in favor of the marriage, considered that at the messenger's petition those judges should be enjoined to proceed lawfully in the same cause according to the attestations received and to terminate it with a due end, the obstacle of every contradiction and appeal having been removed. We nevertheless commanded our beloved sons [...] the Abbots de Granateria, [...] de Insula Calveti, and [...] de Alba Corona that, if the aforesaid judges were negligent or remiss in executing our mandate, they should not delay proceeding to definitive sentence in that business according to the attestations received by those judges, with the obstacle of appeal removed. But the said Viscount of Benaicum, established in our presence,*] set forth *a grave complaint before* us *against the said judges*: that, since the *said* Bishop of Quimper is connected in the nearest degree of blood relationship to the nobleman Guy de Thouars, Count of Brittany, and his archdeacon is a cleric and table-companion of that count—who is the viscount's principal adversary, inasmuch as he presumes publicly to detain his wife and land—and since Master P. *de Buter*, originating from his wife's land, is excessively favorable to her, and all are under the jurisdiction *and power of the same G.*, the aforesaid count, and no access lies open to them except through the count's district, the persons to whom the cause between him and his wife had been committed were never willing to assign him a place and term except in the land of his enemies, which he did not dare approach without danger of death; and although he did not have letters of safe conduct, even if they had been sent to him, he ought not to have entrusted himself to his mortal enemies.

[*Moreover, although we had considered that a certain form should be prescribed to them, after an appeal had lawfully been interposed to us, they abandoned the form which we had prescribed to them and, inquiring only into the appeal while passing over the order of law, when it had not been shown that the appeal was lawful or that anything had been rashly attempted, and when they had not inquired into the other chapters enjoined upon them, less than justly declared void the sentence rightly rendered against the woman.*] *And, presuming before issue had been joined to receive witnesses concerning the principal matter,* [*and rejecting his lawful exceptions, they omitted from their letters the greater part of his allegations, especially those which supported his cause, while setting forth on behalf of the opposing party many things that had not been alleged before them. Moreover, the opposing party, which had obtained the delegation of the cause to them by false suggestion, fraudulently intending through reprobate witnesses to weaken the viscount's justice under the pretext of a frivolous appeal, secretly obtained letters for those same men and the aforesaid Abbots de Granateria, de Insula Calveti, and [...] de Alba Corona concerning the rendering of sentence, while the viscount was on the road to the Apostolic See to prosecute his appeal.*]

[*Hence, since the fraud of his adversaries ought not to support them, and since it is established that after an appeal had lawfully been interposed to us the judges, as manifestly suspect, rashly proceeded in the cause contrary to the form of our mandate, the same viscount urgently petitioned that, after revoking as void whatever had been attempted to his prejudice by those judges or others after the appeal lawfully interposed to us, and after also revoking the letters which had been obtained by falsehood while he was coming to us, we deign to compel his wife through a sentence of excommunication and interdict of the land to return to him, compelling those who detained her*

and the land by the same severity to restore her and the land together with the fruits received from it, and that we cause the sentences to be published every Sunday and feast day throughout the provinces of Tours and Bordeaux and firmly observed until fitting satisfaction.]

Therefore, since in matrimonial causes we ought to be more inclined toward joining than separating, lest perhaps man presume to separate what God has joined, through apostolic writings we command your discretion that, since, *as the same viscount asserts*, you are nearer to the land of the already-mentioned noblewoman than to his own, the cause can more conveniently be terminated through you, since safe access lies open to you. After summoning the parties on each side *and inquiring more diligently into the truth concerning the aforesaid matters*, if it is established to you that before issue was lawfully joined, or after the appeal interposed for the aforesaid causes, witnesses concerning consanguinity against the marriage were received without the fault of contumacy, you are to decree attestations of this kind null and void and, *appeal ceasing*, compel the said noblewoman through *ecclesiastical censure* to return to the husband whom she left without due consideration, *executing the apostolic mandate with the obstacle of every contradiction and appeal removed*, so that, after the husband has received full restitution of both wife and land, you hear the cause concerning the marriage and terminate it with a canonical end. [*As for contradictors, etc. Given at Rome, at Saint Peter's, on the thirteenth day before the Kalends of March,* 1205.]

Textual note: Several corrupt high-byte characters in the Latin Library transcription mark omitted personal names. The Friedberg-derived reference prints ellipsis points at these positions; they are preserved above as **[...]** rather than conjecturally supplied.

Chapter V

Latin source headnote: Before issue has been joined, witnesses are not regularly received concerning the principal matter. This rule fails in the cases noted here, namely when the death or long absence of the witnesses is feared. For then, with the solemnity set forth here observed, witnesses can be examined even before issue has been joined. This is what it says as far as § Moreover. When an action concerns carnal or spiritual marriage, witnesses can be received and definitive sentence rendered against a contumacious person even before issue has been joined. But if the defendant is absent, though not contumaciously, then in a carnal marriage no proceeding occurs, but the absentee is awaited. In a spiritual marriage, however, if the action concerns one already contracted, the ancient laws shall be followed; if one to be contracted, the absentee is awaited for six months. But concerning this last case, when the action concerns a marriage to be contracted, speak today as in the chapter *How Great* and the chapter *Desiring*, On Election, in the Sixth Book, where provision is made otherwise. This is what it says. § 5. For the perpetual memory of the matter, or when proceeding by way of inquiry, witnesses can be received without joinder of issue and even published. This is what it says as far as "But in other cases." § 6. If, before issue has been joined, the defendant is contumacious and a real action is brought, the claimant is placed in possession of the thing sought for the sake of custody. The defendant nevertheless recovers it if he comes within a year, provided that he offers security to stand to the law and restores the expenses; but after a year he is not heard without observing these requirements, except concerning ownership. But if one who possesses in another's name is sued by a real action, he shall name the owner in court, and a term will be established for him within which he shall cause the owner to appear. If the owner does not come within the term, the judge will cite him; if he still does not come, the judge will place the claimant in true possession. But if a contumacious defendant is sued by a personal action, the

claimant will be placed in possession of the defendant's goods according to the amount of the debt declared—first movable goods, and second immovable goods if no movables exist—or the defendant will be excommunicated. This is what it says to the end.

The same.

Because it is frequently called into doubt by many whether witnesses can be received before issue has been joined, we have considered that it should be declared by authority of the present writings to be regularly true that, before issue has been joined, no proceeding is to be had to the reception of witnesses, unless perhaps the death or long absence of the witnesses is feared. In these cases, when one is to proceed civilly, lest the truth be concealed and an abundance of proof be taken away by fortuitous events, the elderly, the infirm, and other witnesses concerning whom fear exists for some reasonable cause are without doubt to be admitted even before issue has been joined, whether the party sued is contumacious or is absent without malice so that he cannot be sued. But if the claimant does not sue the adversary within a year from the time when he can be sued, or at least does not announce to him a reception of witnesses of this kind, the attestations so received are not to be valid, lest perhaps he procure this by fraud so that, through the passage of time, lawful exceptions for excluding the witnesses, or others, cannot have a place.

§ 1. Moreover, special causes can occur in which something else is incidentally to be observed, as, for example, if a question is moved concerning someone's election or marital union. For then, lest a church suffer injury in spiritual and temporal things because of long delay, or an occasion of fornication be furnished to a man or woman—especially when a degree of kinship prohibited by divine law is objected—in cases of this kind, if *namely* the person against whom the action was to be directed appears contumacious, either because, after receiving a peremptory citation, he treats coming with contempt, or because he maliciously conceals himself, or because he impedes the citation from reaching him, witnesses are deservedly to be admitted before issue has been joined, and nevertheless, if the cause is clear, one is to proceed to definitive sentence.

§ 2. But if he is absent otherwise, and the action concerns a spiritual marriage already contracted between a prelate and a church—especially when the election has been confirmed—we will that what is defined in the sacred canons concerning awaiting such persons be observed in this article.

§ 3. But if perhaps the action concerns a spiritual marriage to be contracted, the person elected as prelate is to be awaited for the space of six months, unless, after weighing the circumstances of the business, he is to be awaited for more or less time by the superior's providence.

§ 4. But if an action concerning carnal marriage is to be brought, either spouse is to be awaited until his death is probably presumed. For since he is absent without fault—as if perhaps he is detained by captivity, illness, or another just impediment, or even stays in remote regions by his own but not malicious will, so that he cannot easily or quickly be cited—he ought not to be prejudiced, since perhaps he has lawful exceptions to destroy the opposing claim. It does not stand in the way that lapse of the flesh could be objected, since in marriage many cases occur in which spouses are compelled to remain continent without fault, although not without cause.

§ 5. There are also other similarly special cases, *which we remember having distinguished elsewhere*, in which witnesses can lawfully be produced without joinder of issue, as when an inquiry into excesses or publication of witnesses is imminently to be made.

§ 6. But in other cases one must prudently consider whether the contumacious person is sued by a real or personal action. If by a real action, the claimant is *certainly* to be placed in possession of the thing sought, so that the defendant, affected by weariness, may come to answer. If he comes within a year, let him recover possession after furnishing security to appear for judgment and exhibiting suitable satisfaction for expenses. But if he neglects to offer security within a year, after the year the claimant will be constituted the true possessor, with a lawful defense concerning ownership alone reserved to the opposing party.

§ 7. But if anyone is sued concerning immovable things which he possesses in another's name, he ought immediately to name the owner in court, within a certain space of days to be established by the judge, and bring this to the owner's knowledge so that, coming personally or directing a suitable representative, he may oppose the claimant's claim. But if, after the allotted time, he is unwilling to fulfill what has been arranged, as though the suit brought has been joined from the day on which the possessor was called to judgment for the purpose of interrupting prescription of long time, the judge shall summon the owner of the possession by three lawful edicts; and then, if he remains in the same will, after examining the business summarily, the judge shall not delay placing the claimant in possession of the things themselves, with every allegation concerning the principal question reserved to the absentee.

§ 8. But if he is sued by a personal action, either the claimant is to be placed in possession of the defendant's movable *goods*, or of his immovables if perhaps he has no movables, according to the amount of the debt declared, or an ecclesiastical sentence is to be pronounced against the contumacious person. The judge, namely, is to be content at the beginning with whichever penalty ought to be feared more, proceeding nevertheless to the other if the insolence of the contumacious person merits this. If he comes within a year, or even after a year, he will be heard according to the distinction noted above in the other case.

Title VII: On the Oath against Calumny

Chapter I

Latin source headnote: A cleric can commit the oath against calumny to another in a cause of his church, and is not compelled to swear personally, nor ought he to do so without his superior's permission.

Honorius III.

Adhering to the footsteps of our predecessors, who say that graver questions are to be terminated by the Supreme Pontiff, *after diligently seeking the counsel of our brothers, with God's help we decide the form of this cause irrefragably.* We therefore find it provided in the laws that no cleric is to presume to swear. Elsewhere, however, it is found written that all principal parties are to undergo the oath against calumny at the first beginning of the suit, on account of which it comes into doubt for many whether a cleric ought to furnish the oath or whether it is lawful to delegate this office to *another person*.

But because that constitutional edict in which clerics are prohibited from swearing appears to have been promulgated concerning the clerics of Constantinople by Marcus Augustus *to Constantine, the praetorian prefect*, it is therefore not believed to pertain to others. Therefore, so that this doubt may be

entirely removed from all, according also to the decision of our son H., formerly emperor, *made, as we have learned, at Rimini on the third day before the Nones of April, as is contained there*, whose words are these: "We therefore confirm its interpretation and decree that the constitution of the divine Marcus ought to be interpreted in such a way that it is judged generally to pertain to the clerics of all churches. For since Emperor Justinian decreed *by law* that the canons of the Fathers ought to have the force of laws, and since in certain canons of the Fathers it is found that clerics are altogether not to dare to swear, it is fitting that the whole clerical order be immune from furnishing the oath against calumny."

Moreover, the tenor of the prince's statute *in our possession* is known to be this: "Therefore we, with the intention of *both* divine and human law preserved, decree and irretractably define by imperial authority that no bishop, no priest, no cleric of any order, no abbot, no monk, or religious woman is for any reason to be compelled to undergo an oath in any cause or controversy, whether criminal or civil; but if he knows that it is expedient for his church, let it be lawful to delegate an office of this kind to other suitable defenders—yet with this qualification, that a bishop is by no means to dare to swear without consulting the Roman Pontiff, nor any cleric without consulting his prelate."

We command all bishops, *all priests generally*, and the entire clergy that these provisions ought thus to be observed, so that, if anyone acts against that constitution, he may know that pardon will thereafter be denied him, *and so that they do not take as an example or form from us what we recently did in the cause of our brothers and fellow bishops of the churches of Arezzo and Siena, when we assented to their will and petition.*

Chapter II

Latin source headnote: In spiritual causes the oath against calumny is not sworn.

The same, to Ordinator, Subdeacon of the Roman Church, and Master Omnibonus.

We *kindly received the letters of your kindness, in which you asked whether it is fitting that the oath against calumny be furnished in the cause conducted under your examination between our venerable brother G., Bishop of Bologna, and our beloved son Aldric, Abbot of Padua.* Certainly, in those cases in which an action concerns only churches, tithes, and spiritual things, the Roman Church is accustomed neither to give nor receive the oath against calumny, because such causes obtain their due end not from the strictness of the laws but from the equity of the canons; and the canons impose the oath against calumny upon no one at all in causes of this kind. Hence, the contention about furnishing the oath against calumny having been set aside, let your discretion proceed to further matters.

Chapter III

Latin source headnote: A principal party is not indiscriminately relieved from the burden of swearing the oath against calumny, although he appears through an oeconomus; rather, after inspection of the quality of the cause and persons, it is to be tendered to him or to the oeconomus. This is what it says.

Pope Eugene.

In handling causes we do not command that the oath against calumny be exhibited indiscriminately, but, *when we permit it to be done and* after *diligent* inspection of the quality of the cause and of the principal parties, we command it to be furnished sometimes by the principal parties themselves and sometimes by the oeconomi *granted to them*, who are not altogether ignorant of the cause, upon the

soul of the person swearing. *Therefore, so that the cause conducted between the Abbey of the Holy Trinity and the church of Ripoll may, by the Lord's authorship, obtain its due end without delay, by authority of the present writings we command that, as shall appear to you more salutary and suitable, you terminate the cause itself as justice dictates, with appeal removed. We also add that the monastery of the Holy Trinity is in no way to be deprived of its right on account of the injury which, while the Abbot of the Holy Trinity was ignorant, we have heard was inflicted upon the Abbot of Ripoll, if justice is otherwise known to favor it.*

Chapter IV

Latin source headnote: A corporation is bound to swear the oath against calumny unless it relieves itself by appointing an oeconomus.

The same, to the Bishops of Maguelone and Nîmes.

The *laws of secular emperors and the ecclesiastical constitutions of the holy Fathers protect and defend religious men in the service of almighty God and do not permit any molestation or disturbance contrary to holy order to be inflicted upon them.* We have *however* learned that the oath against calumny is required from the Abbot and Brothers of Clairvaux as it is from others—*although this is uncustomary among the brothers of that order*—and *we cannot and* ought not compel them to furnish it.

§ 1. But lest they appear on an occasion of this kind unlawfully to retain the rights of others, and lest they fall from their cause if the aforesaid oath has not been furnished on their behalf when the matter demands it, we command them to appoint in their monastery, *as the imperial laws permit*, an oeconomus who can claim and except on their behalf and, when necessary, exhibit the oath against calumny. *Therefore, through the present writings we command your fraternity that you instruct the same brothers who are in this cause more fully, as reason requires, so that they cannot thereafter lose their rights on this account and ought, so far as justice permits, to satisfy others in such causes.*

§ 2. But you, brother Bishop of Nîmes, are to appoint a suitable oeconomus who appears fitting for that monastery in such an office.

Chapter V

Latin source headnote: Clerics also swear the oath against calumny in their causes, notwithstanding a contrary custom.

Lucius III, to the Bishop of Ely and the Archdeacon of Norwich.

Furthermore, because it is fitting that new antidotes be prepared for new diseases, *we will and* command that, in the cause *concerning suretyship* pending between R., cleric of Saint Albans, and I. and F., Canons of London, in order to elicit the truth you cause the oath against calumny to be furnished by both parties, appeal ceasing, notwithstanding the custom which is contrary to law. [*Given at Rome, at Saint Peter's, on the fifth day before the Ides of December.*]

Chapter VI

Latin source headnote: The proctor or syndic of an ecclesiastical or secular corporation can swear the oath against calumny. This is what it says.

Innocent III, to the Bishop of Piacenza.

When we considered that the cause pending between *our venerable brother* the Archbishop of Ravenna and the commune of Faenza concerning the village of Lugo and certain other matters should be committed to delegated judges, and those judges had not proceeded in the business, we commanded the parties to present themselves before us for that cause. When their proctors, with instruments of ratification, had been established in our presence, *and when there had been argument for some time in our presence concerning joinder of issue, the reception of certain witnesses, and many exceptions, we at last* caused the petition of the archbishop to be exhibited through his proctor and the other party to answer it; and, after the interrogations and answers had been reduced to writing and issue had been most fully joined before us, we caused the oath against calumny to be furnished by the proctors themselves on each side. [*But because, etc.* (cf. c. 37, On Witnesses, II.20.) *Given at Ferentino, on the tenth day before the Kalends of July, in the ninth year of our pontificate,* 1206.]

Chapter VII

Latin source headnote: A bishop swears the oath against calumny if he personally chooses to litigate, with the Gospels merely set before him but not touched. But if he litigates through a syndic, he will be able to swear through him. This is what it says. § 1. A claimant who refuses the oath against calumny without cause ought to fall from the action instituted; the defendant, however, ought to be held as having confessed. This is what it says.

Gregory IX, to the Bishop of Beauvais.

Since in the pecuniary cause which you propose has been moved between you and R. you have chosen to litigate not personally but through a syndic or representative, the oath against calumny will indeed have to be furnished through him. But if you litigate personally, it appears that an oath of this kind is to be exhibited by you with the Gospels merely set before you but not touched, as when giving testimony. (*And below:*)

§ 1. The penalty for one refusing this oath when it is to be furnished is that the claimant falls from the action instituted, while the defendant ought to be held as having confessed.

Title VIII: On Delays

Chapter I

Latin source headnote: Summarize thus, lest it appear to belong under the rubric on appeals: a citation that is both summons and peremptory ought not to be excessively brief, especially where ecclesiastical things are concerned, unless necessity suggests otherwise.

Alexander III, to the Bishops of Canterbury and Worcester.

Our beloved sons, the Abbot and Monks of H., took care to intimate to us that, when we committed to the Dean and Archdeacon of Lincoln for termination the cause pending between them and the nuns of Leden. concerning the church of Alten., they, fearing that they would be aggrieved by the *aforesaid* judges because at the first citation they established for them an excessively brief and peremptory term, appealed to our hearing; *the judges nevertheless adjudged the aforesaid church to the aforesaid nuns*. (*And below:*) But because it does not belong to the order of law to hasten a peremptory day in such a way, *especially* when ecclesiastical things are concerned, unless perhaps necessity

presses, *nor to promulgate sentence in such a way against those who contumaciously absent themselves—except that the opposing party be placed in possession, so that, affected by weariness, they may thus be compelled to stand in judgment—through apostolic writings we command your fraternity, by way of precept,* that, if it is so, after revoking as void whatever you find attempted after an appeal of this kind, you proceed in the cause according to the tenor of the earlier letters.

Chapter II

Latin source headnote: Deliberative adjournments are denied to a defendant if through the letters of citation he could have been fully instructed and could have deliberated concerning the matter in question.

Celestine III.

Furthermore, *in your petition* you added that, when causes are delegated to you by the Apostolic See, you insert the apostolic rescript in the letters of citation so that, after seeing it, the one sued by another may be able to deliberate. *And when he comes not at the first and second canonical citation but only at the third, peremptory one—although the claimant comes at all the citations—and the claimant proposes his claim in court, the defendant, intent upon vexing him, then for the first time seeks deliberative adjournments, although the claimant offers him the authentic instrument so that he may compare it with the rescript which he received at the first citation, asserting also that during so long a span of citations he could, if he wished, have had time for full deliberation.*

§ 1. Therefore, because you desire to be instructed about what is to be done in this case, we answer you in this way: when the defendant has been lawfully summoned to judgment *in the aforesaid manner*, if from the rescript transmitted to him he could have been fully instructed concerning the matter about which he is sued in judgment, deliberative adjournments are not [*further*] to be granted to him, but one is rather to proceed to examination of the cause and impose its due end. [*Given at the Lateran, in the third year of our pontificate,* 1193.]

Chapter III

Latin source headnote: From the clarification of a general or ambiguous word placed in a complaint, new deliberative adjournments are not to be given if, from the things expressed, the defendant could deliberate concerning that ambiguity or generality. This is what it says.

Honorius III, to the Bishop of Ferentino.

Your letters and the petition of *our beloved son*, the priest of Saints Prisca and Aquila in the City, exhibited to us contained that, *when we had considered that the cause pending between the same archpriest on one side and the noblemen Andrew of Alatri and G., and their brothers and sons, on the other, concerning certain possessions and other things, should be committed to you,* the same priest offered against the noblemen A. and G., in the name of his church, a complaint containing that the pension from the *said* possessions had not been paid to that church, three years and more having now elapsed.

But when those noblemen petitioned that he explain to them the span which he intended to signify by this addition, "and more," and the priest expressed that payment of the said pension had ceased for seven years, the same *noblemen*, saying that the complaint had been changed by an expression of this kind, sought longer adjournments for deliberating. Because you denied these to them, they

appealed to our hearing. Therefore, considering an appeal of this kind frivolous, we command *your fraternity* that, notwithstanding it entirely, you proceed in the business itself, reason leading the way, according to the contents of the earlier letters.

Chapter IV

Latin source headnote: If a person cited in an arduous cause is summoned from afar for the public utility, even to the place of judgment, in such a way that within the term of citation he could not deliberate and arrange the other things necessary for appearing, he is not compelled to answer at the term if he is found at the place of judgment, but will have new adjournments. This is what it says notably.

Gregory IX, to the Abbot of L'Eau Vive in the diocese of Tours and the Archdeacon of Tours.

The Archbishop of Bourges set forth to us—(*And below:*) We commanded the Archbishop of Bordeaux that, concerning the right of primacy which the said Archbishop of Bourges proposes that he has over him and his province, he should present himself before us, personally or through a suitable proctor, at the beginning of the recently past Lent, which we assigned him as a peremptory term. And when afterward, personally summoned for the support of the Roman Church, he approached our hearing, the said Archbishop of Bourges, established at the Apostolic See, urgently petitioned that we ought to proceed in the same business.

But the same Archbishop of Bordeaux, returning to his own lands, constituted a proctor for himself in that business who, preserving the exceptions belonging to him in answering, defending, and other matters, was to do everything which he would have done in his own person. Therefore, when the aforesaid archbishop petitioned that the proctor answer him, the latter proposed by way of exception that he was not bound to do this, since the said Archbishop of Bordeaux, having been summoned for another, greater cause—namely, for the public utility—ought to have been regarded as absent and to have possessed the privilege of being sent back home. Nor had he yet deliberated concerning this matter with his suffragans and others whose counsel so arduous a cause required, nor had he had time in which he could be prepared for both businesses as was expedient.

But the other party answered to the contrary that, since he had first been summoned concerning the aforesaid question, it had not been our intention to revoke the first mandate by the later one. He had also had so long a space of time that, if he had wished, he could have deliberated concerning the aforesaid cause, as he had done with certain persons, and conveniently attend to both businesses. (*And below:*) Therefore, with the counsel of our brothers, we considered that a further delay until the next coming feast of the Lord's Nativity should be granted to him.

Title IX: On Judicial Vacations

Chapter I

Latin source headnote: On Sundays one ought not to trade, litigate, judge, or swear, but they ought to be celebrated from evening to evening.

From the Council at Compiègne.

We decree that all Sundays be observed from evening to evening with every reverence, and that persons abstain from every unlawful work, so that on them no market at all is held, nor any judicial hearing, nor is anyone judged to death or punishment, nor are oaths furnished except for peace or some other necessity.

Chapter II

Latin source headnote: The beginning and end of feasts ought to be determined according to their importance and the custom of the region. This is the first point. On the principal feasts and between Easter and Pentecost no solemn bending of the knees is made. If, however, clerics or bishops are then ordained, the knees are bent according to the manner of the ordination. This is the second point. The Roman Church does not keep a special feast of the Trinity; nevertheless, the custom of each church concerning this is preserved. This is the third point.

Alexander III.

Because in the region—(*And below:*) *We wish your prudence to hold with certain knowledge that*, although it is written, "From evening to evening you shall celebrate your sabbaths," nevertheless the beginning and end of feasts ought to be considered according to their character and *according to* the custom of the various regions; and, just as the importance of the days requires *them to be celebrated, so by true reason they appear* to begin earlier and to end later. (*And below:*)

1. On Sundays, however, and on other principal feasts, or between Easter and Pentecost, a bending of the knees ought by no means to be made, unless someone out of devotion wishes to do this in private.
2. But at the consecrations of bishops and the ordinations of clerics, only the consecrator and the person consecrated may bend their knees, according as the manner of consecration requires.
3. Furthermore, according to the customs of various regions, the feast of the Holy Trinity has customarily been celebrated by some on the octave of Pentecost, by others on the first Sunday before the Advent of the Lord. The Roman Church, however, does not have it as its usage to celebrate a special feast of this kind at any time, since every day "Glory be to the Father and to the Son and to the Holy Spirit," and other similar things pertaining to the praise of the Trinity, are said. *Wherefore, brother archbishop, we have by no means been able to give you a certain answer concerning the use of the pallium on the day on which the feast of the Holy Trinity is celebrated.*

Chapter III

Latin source headnote: On account of the necessity of sustenance, it is permissible on feast days established in honor of God to attend to servile work, especially concerning a thing liable to perish with time. This is what it says.

The same, to the Archbishop of Trier.

Although the page of both the Old and the New Testament has specially assigned the seventh day to human rest, and the Church has decreed that both it and other days assigned to the Most High Majesty, as well as the birthdays of the holy martyrs, are to be observed, and that on these one must cease from every servile work, *nevertheless we, to whom the governance of the Church has been entrusted by the*

Provider of all, are bound fittingly to provide for the faithful of Christ concerning those things which necessity requires, so that, if at any time it should happen that they attend, not to servile work—that is, to the doing of sin—but perhaps to seeking things necessary for food and clothing, we will that the providence of the Apostolic See come to their aid with its accustomed mercy. Hence indeed it is that, knowing from the reports of many that your region does not abound in many crops and that the sea, in which the people have customarily had their greater sustenance, has become more barren than usual, by the authority of blessed Peter and our own we grant that, on Sundays and other feast days, except on the greater solemnities of the year, if herrings have approached the land, it may be lawful for your parishioners, under the pressure of necessity, to attend to catching them, yet *in such a way* that, after the catch has been made, they make a fitting portion for the neighboring churches and the poor of Christ. *If, however, those who are bound by a penance imposed upon them to pass certain days on bread and water do not have bread on which to feed, let them, if necessity requires, be refreshed with fish or other foods, moderate discretion nevertheless being employed, so that they use these not for delicacies, but only for necessary sustenance.*

Chapter IV

Latin source headnote: The three weeks during which the canon prohibits weddings from being held before the feast of John the Baptist are not continuous with the feast, but are understood to mean the week of the Ascension together with the two following weeks.

Clement III, otherwise Celestine III.

Your chaplain, brother bishop, proposed before us on your behalf that, since the canonical statutes declare that weddings ought by no means to be celebrated during the three weeks before the feast of the Nativity of blessed John the Baptist, some understand those weeks to be continuous without interruption. Others, however, wishing to make an interval between the feast and those weeks, say that this was established out of reverence for the feast of Pentecost, which is sometimes accustomed to fall within these weeks; and thus, beginning from the three Rogation Days before the Ascension of the Lord and extending to the eighth day after Pentecost, those weeks being counted, they do not permit weddings to be celebrated during that space of time alone, but by no means prohibit their celebration thereafter.

Therefore, because we were consulted as to which of these opinions appears the stronger, it appeared to us and our brothers that, although this has been the custom of the Roman Church, *observed from long-past times*, that at whatever time a marriage is contracted with a legitimate consent in the present tense intervening—nevertheless, because weddings are not permitted to be celebrated from Septuagesima until seven days after Pentecost, and afterward they are celebrated without distinction even within three weeks or more before the feast of Saint John, the latter opinion rests upon better and subtler reason. And whether, according to the canons, weddings are suspended from Septuagesima until after the octave of Easter, or, according to the custom of the Roman Church, until after the seven days of the feast of Pentecost, which has no octave, they may lawfully be celebrated on the following Sunday and thereafter.

Chapter V

Latin source headnote: On judicial vacations introduced in honor of God and the saints, judgment cannot be exercised, even with the consent of the parties, unless by reason of necessity or piety; the

parties can, however, renounce judicial vacations introduced for the benefit of human beings.

Gregory IX.

He complained to us—(*And below:*) Although questions ought not to be prolonged but dispatched, nevertheless judicial clamor ought to be quieted on feast days, which are known to have been established out of reverence for God, namely: the Nativity of the Lord; Saint Stephen; John the Evangelist; the Holy Innocents; Saint Sylvester; the Circumcision; the Epiphany; the seven days of the Lord's Passion; the Resurrection with the seven following days; the Ascension; Pentecost with the two days which follow; the Nativity of John the Baptist; all the feasts of the glorious Virgin; the Twelve Apostles, and especially Peter and Paul; blessed Lawrence; the Dedication of blessed Michael; the solemnity of All Saints; Sundays; and the other solemnities which the individual bishops, together with clergy and people, shall have determined are to be solemnly venerated in their dioceses. On these solemn judicial vacations it is assuredly fitting to abstain from things of this kind—unless necessity urges or piety counsels—to such a degree that, even if the parties consent, neither shall proceedings conducted be valid, nor a sentence which happens to be promulgated on days of this kind; although on judicial vacations which are granted on account of vintages or harvests because of human needs, proceedings may be conducted if this has proceeded from the will of the parties.

Title X: On the Order of Judicial Inquiry

Chapter I

Latin source headnote: Against a woman claiming someone as her husband, an exception of consanguinity is admitted, which must be discussed before judgment is pronounced concerning the marriage; and it is sufficient to pronounce upon the principal matter itself. This is what it says.

Clement III, to the Bishop of Alatri.

We have understood from your letters that, when a certain woman claimed a certain man as her husband, she produced witnesses in support of her contention; through them the man's party, fearing future prejudice to itself, interposed an exception of consanguinity, by which it maintains that the woman's petition is *entirely* defeated. *Because you wished to consult us as to whether the impediment of consanguinity should be dealt with before sentence is rendered upon the matrimonial cause,* we have considered that your inquiry should be answered in this way: since, when the exception is proved, the principal question is extinguished, cognizance must be taken of the exception before proceeding to the point of definition. When this has been done, you shall absolve the man from the woman's attack, as the reason of law requires.

Chapter II

Latin source headnote: If a defendant objects that the plaintiff is a despoiler, he does so either by excepting, and then he is heard first and, when this is proved, is not compelled to answer, but is not restored by this; or by bringing an action, and then both questions are determined together, and when it is proved he will be restored.

Innocent III, to the Bishop of Narni.

When the beloved son, the Abbot of Ferentillo, *had approached our presence, complaining* of the noblemen *O. and A., his brother, and the sons of R.*, lords of Arrone, *the parties being established in our presence, we appointed as auditors our beloved sons I., cardinal priest of the title of Saint Mary across the Tiber, and G., cardinal priest of the title of Saint Pudentiana. In their presence the abbot* set forth his complaint: that *the aforesaid nobles, without any previous demand*, coming with armed force and an army to the monastery's castle *of Ferentillo and Gabio*, had presumed to damage the said monastery, through seizures of animals, *burning of crops, captures of men, homicides committed*, and other *losses up to the amount of five hundred Lucchese pounds, apart from the slaughter of men and the injuries inflicted*; and he requested that justice be done for him concerning these *and likewise other matters which he wished to propose against them*.

Before joinder of issue it was answered against him in the form of an exception that, *since the abbot himself had promised the noblemen O. and R., under an oath furnished, that he would assist them against all men—except the Roman Pontiff, the emperor, and their legates—to retain what they then held in castles, villages, and other goods, and to recover it without fraud or evil contrivance if they lost any of it*, through his deceit and violence they had *fraudulently* lost the castle of Sirati, which both their ancestors had held and they themselves had possessed in peace. [*Although he had often been admonished by them concerning this, he refused to restore it to them. Indeed, rather, in breach of the compact, he and his men had plundered in animals, spoils, and other household goods the three villages—namely Quadraginta, Casale, and Carpium—which the said abbot had received under safeguard for himself and his party; married women had been shamefully treated and women also harshly beaten. He even caused a priest, with his hands bound behind his back, to be led before him, afflicted with blows and wholly stripped of his garments. He also caused the men of the villages to be shut in prison, where it happened that one of them expired. The abbot also caused fire to be set by night to the castle in which the said nobles dwelt; through this, in the aforesaid losses and many others, they said that they had been despoiled of as much as one hundred marks.*] They therefore petitioned to be restored before they answered his petitions, especially since they had witnesses present through whom they wished to prove their contention immediately, *and they endeavored to show by the authorities of both laws that restitution ought to be made to the despoiled before entry upon the cause*.

But on the abbot's behalf it was replied as follows: that *his libellus ought first to be answered according to the rule of law by which it is said, "Let him who first calls another to judgment first proceed"*; that restitution could not be sought from one who had not been the despoiler, especially since the said castle pertained to the right and ownership of his monastery, which the adverse party did not deny at all; and hence that the true owner, to whom his own thing returns from another by whom it is possessed, even after rather long periods, ought to obtain the advantage of retention, while the restitutory judgment is known to lie only against a despoiler. *Nor could restitution be demanded for losses inflicted, but a competent action ought to be brought for them; otherwise, since the abbot's party also complained that very grave losses had been inflicted upon it, those losses would first have had to be restored, if restitution were to be made for matters of this kind according to the tenor of the aforesaid rule. They also asserted that the chapters speaking of restitution to be made have place in criminal matters and when someone is despoiled by an adversary and is sued concerning the very thing of which he had been despoiled. Moreover, the adverse party said that the rule introduced by the abbot's party has place in mutual petitions, since causes treated in turn are afterward determined by one sentence. But when one party proposes that something is owed to it by way of restitution or in some other manner, and the other asserts by way of exception that it has been despoiled and will by no means answer before its own restitution, it asserted that cognizance must first be taken of the incidental matter.*

We, however, believe that a distinction must be made as to whether the question of spoliation is raised by those nobles by way of an action for seeking restitution, or in the form of an exception for repelling the opponent's contention. For when it is proposed by way of an action, the mutual petitions are understood not to touch one another, as being distinct; and consequently, in accordance with the aforesaid rule of law by which it is said, "Let him who first calls another to judgment first proceed," the one which was proposed first would be treated first, although, when both had been brought into the same proceeding and treated in turn, they would be determined together by the same sentence. But because that question was raised by those nobles only by way of an exception, *by the common counsel of our brothers* we pronounced by an interlocutory judgment that their proofs concerning that exception should first be heard; and, when it had been lawfully proved, they should not be compelled to answer the abbot concerning the aforesaid petitions until they were restored by him, since one despoiled is by no means compelled to answer his despoiler before restitution.

1. Yet when spoliation has been proved only by way of an exception, restitution is not to be made by this fact, just as, if some crime is alleged against a witness by way of an exception so that he may thus be repelled from testimony, even if [*thus*] the crime has been proved against him civilly, the ordinary penalty is not therefore inflicted upon him, but credence is merely not given to his testimony. This occurs for the reason that an accusation is not proceeding against him. Nor are witnesses whose testimony is rejected held among the infamous as though on account of false testimony. [*But when, etc. Given at Amelia on the third day before the Nones of October,* 1198.]

Chapter III

Latin source headnote: Against one seeking an inheritance there lies an exception concerning birth, which must first be determined before the ecclesiastical judge. This is what it says according to the gloss, with the understanding that the inheritance here had first been sought before the secular judge, and an exception had been taken concerning illegitimacy.

Honorius III, to Louis, King of the Franks.

We do not believe it escapes your prudence that the cause concerning the birth of *our dearest daughter in Christ, the illustrious* Queen of Cyprus, since it pertains to the ecclesiastical forum, *has long since* been brought to our examination. *Hence we took care to admonish by our letters Philip, king of the Franks of illustrious memory, your father, that if the queen herself should perhaps propose before him a question concerning succession to the county of Champagne, he should not hear it until the aforesaid cause concerning her birth, upon which that question is known to depend, had been determined. Therefore, although, as we wrote to your father, we wish the queen herself to be heard in her just petitions*, nevertheless, because to begin the cause of succession dependent upon it before the cause concerning birth had been determined would be nothing other than to entangle the business in diverse proceedings and to disturb the order of judgment by a certain confusion, if perhaps you are requested concerning this by the queen herself, *or by her messenger or any other person*, you shall wait patiently until the aforesaid cause concerning birth has received its end by apostolic judgment. [*Given at the Lateran on the seventeenth day before the Kalends of December, in the eighth year of our pontificate.* 1223.]

Chapter IV

Latin source headnote: One bringing a possessory action for recovery is not bound before restitution to answer his despoilers, except concerning the question of spoliation; he can nevertheless be repelled from bringing the action by an exception of spoliation. This is what it says.

Gregory IX.

A person sued concerning spoliation is not to be heard against one seeking restitution—unless he brings a counterclaim against him concerning the question of spoliation—since a petition for restitution is known to be privileged in this respect: one instituting it is not compelled before restitution to answer his despoilers, although he may be repelled from bringing the action when the spoliation is proposed by them by way of an exception.

Title XI: On Excessive Claims

Sole Chapter

Latin source headnote: It sets down the four modes of claiming too much and the penalties of those who claim too much.

Gregory IX.

It cannot be called the counsel of prudence that you demanded from your adversary before the term the money owed to you. For the importunity of those claiming too much is punished if they have determined to persist in judgment with their petition, in such a way that those who, without cause, seek more in respect of the thing are condemned in expenses to the adversary.

1. Those who claim too much in respect of place are liable for the interest, because the advantage which the debtors would have had if they had paid at the appointed place is taken from them.
2. For him from whom more is sought in respect of time, the delays are doubled, nor shall he undertake the lawsuit unless his expenses are paid to him.
3. We do not believe that you doubt that too much is sought in respect of cause when something is owed generically or under an alternative and it happens that a specific thing or one thing precisely is sought.
4. In respect of the thing, however, when ten are owed and twenty are demanded.
5. In respect of place, when someone is sued, not where it was agreed that he should pay, but elsewhere.
6. In respect of time, when what is owed is sought before the day or the condition.

Title XII: On the Cause of Possession and Ownership

Chapter I

Latin source headnote: The cause of possession and ownership ought to be determined before one and the same judge, nor is judgment to be pronounced against an absent person.

Gregory I, to the Duke of Sicily.

Having received [*the letters of your Magnitude, we were saddened that you indicated that certain possessions, which you say you held, had been unreasonably occupied by the agents of the Church of Syracuse. But we believe that this did not come to the knowledge of our brother and fellow bishop John. For, once the truth was known, whatever had been unlawfully done could readily be corrected. And therefore, because*] it has been decreed by legal provision that both the cause of momentary possession and the cause concerning ownership ought to be heard before one and the same judge, and we cannot determine anything against a party who has not been heard, [*to the aforesaid brother, etc. Given in the month of October, in the second indiction.* 598.]

Chapter II

Latin source headnote: If proceedings have been conducted in both the possessory and the petitory action, the judge, after receiving the proofs concerning both, may first discuss the proofs concerning the possessory action and determine it. This is what it says.

Celestine III.

Finally, we were asked whether judges appointed to take cognizance of possession and ownership, wishing to spare the parties heavy expenses, may hear the allegations concerning both intermingled and likewise admit the witnesses, and thereafter first hear the attestations concerning possession and pronounce according to their tenor; and whether this is lawfully done. We answer that it may lawfully be done, since this is expressed in the civil law.

Chapter III

Latin source headnote: If a person who has been despoiled, bringing the possessory and petitory actions together, proves possession and spoliation but not lordship or ownership, he prevails in the possessory action but fails in the petitory.

Innocent III, to the Archbishop and Canons of Sutri.

When the Church of Sutri was without a pastor, you came together and, as is customary, after the grace of the Holy Spirit had been invoked, unanimously elected a pastor, petitioning that his election be confirmed by the Apostolic See. But *the beloved sons*, the clergy of the conventual churches of that same city, afterward laid their complaint *against you before us*: that, since they and their predecessors had been accustomed to take part in *making* episcopal elections, you presumed, while they were *unwilling*, resisting, and excluded, to proceed to *make* the election; and for that reason they petitioned that it not be confirmed, but rather annulled.

Therefore, when the parties had been established before the Apostolic See *for a question of this kind, we gave them as auditors our beloved sons B., cardinal priest of the title of Saint Peter in Chains, I., cardinal priest of the title of Saint Prisca, and the cardinal deacon of the title of Saint Mary in Cosmedin*. In the presence of *these* auditors witnesses were produced on both sides, and, their depositions having been published, the party of the canons said that by the witnesses whom they had produced their contention—that the election pertained to them alone—had been sufficiently proved. The party of the clergy nevertheless asserted that by the statements of the witnesses whom they had produced they too had more fully proved their assertion that they ought to take part in the election of bishops; through these statements, they said, it was established that they had been present with the canons of the cathedral

church at the elections of the three bishops who had last and immediately presided over the Church of Sutri, and that they had possessed with the others a voice in electing.

We therefore, *having heard the allegations and reasons of the parties and having diligently inspected the depositions themselves*, because we *clearly* discovered that your witnesses had been inconsistent in giving their testimony and had wavered before the *said* auditors against the credibility of their attestation, *as those auditors afterward reported to us*, and because they were endeavoring in a certain manner to establish a negative—wishing to prove that the right of election pertained *indeed* to you in such a way that it by no means pertained to your adversaries—while it was sufficiently shown by the witnesses of the adverse party that in the elections of the three bishops mentioned above the clergy had been present and had possessed a voice in electing, *by the counsel of our brothers* we decreed that the aforesaid election, made while they contradicted and were excluded, should be annulled, restoring the often-mentioned clergy to that quasi-possession which they had held before the controversy was moved.

Yet because in the aforesaid question whatever right either party had in the election appeared to have been brought into judgment, since it is provided by the civil law that not only that which it was intended should come into judgment does come into judgment, but that does not come into judgment concerning which it was expressly intended that it should not come; and since, according to the canonical statutes, the elections of bishops are known regularly to pertain to the clergy of cathedral churches unless *perhaps* a special custom obtains otherwise in some place; and since the aforesaid clergy could not acquire for themselves the right of electing from the fact that they had proved that they had taken their place among those electing the bishops of Sutri on three occasions, because of the brevity of a time not extending to lawful prescription; and since, when the plaintiff does not prove his case, the person sued will prevail even if he has furnished nothing—we have considered that you should be absolved from their attack concerning elections to be made, imposing perpetual silence concerning this upon the often-mentioned clergy of the churches. [*Therefore let no one, etc. Given at the Lateran on the seventh day before the Ides of February,* 1200.]

Chapter IV

Latin source headnote: With respect to its sense, this says the same thing as the immediately preceding decretal.

The same, to the Canons of Bethlehem.

When, concerning the election of the Church of Bethlehem, a question was being conducted between R., our subdeacon, and P., canon of the Lord's Sepulchre, *recently in our presence*, each conducting himself as the elect—since the aforesaid subdeacon had been confirmed by *our venerable brother*, the Patriarch of Jerusalem, *while the other enjoyed royal favor—we gave them as auditors our beloved sons P., cardinal priest of the Basilica of the Twelve Apostles, I., cardinal priest of the title of Saint Stephen on the Coelian Hill, and G., cardinal deacon of Saint Mary in the Portico. In their presence, witnesses having been received on each side and their depositions published, they faithfully and prudently reported to us and our brothers what had been alleged on this side and that. But we, having been sufficiently instructed concerning the merits of the cause both through the cardinals' reports and through the acts, after sharing the counsel of our brothers,* decreed, by the mediation of justice, that the person who had proved that he had been despoiled by secular power should be restored. Yet because both the possessory and *also* the petitory matter had been brought into judgment, and both the question of restitution and that of election had been fully argued, and

because it was established to us that the election of each had been less than canonical, since a judge ought to pronounce upon *even* the matter of which he has taken cognizance, we considered that both elections should be annulled by sentence *according to the canonical sanctions*. [*Moreover, etc.* (*Cf. c.* 2, *On Confessions, II.* 18.)]

Chapter V

Latin source headnote: One who brings an action concerning ownership may, before the conclusion of the cause, bring a possessory action for acquiring or recovering possession; but after conclusion and before sentence he cannot do this unless a just cause is present.

The same, to the Bishop of Noyon.

You pursue *the duty of pastoral office with a solicitous mind when, inflamed by zeal for justice, you humbly seek and devotedly await, through the oracle of the Apostolic See—from which the authority of your jurisdiction depends—answers concerning doubtful points of law, lest perhaps a new diversity of opinions or an exception of law distinguished by novel variation should produce, not the effect of law, but rather bring about a failure of justice.* Indeed, as *you informed us through your letters*, it sometimes happens that, when one who asserts that he has been despoiled brings his despoiler into a cause and, being asked at the very beginnings of the law which judgment he prefers to employ, enters the lawsuit concerning ownership without making any mention of the violence inflicted upon him, then, when *the proceeding in the cause has advanced so far that witnesses have been produced on this side and that*, he endeavors to begin a new judgment concerning the possessory matter, *saying that one who has begun to vindicate a thing does not appear to renounce the possessory judgment. It is resisted on the other side that, when he voluntarily proposed the complaint concerning ownership, he created prejudice against himself in the question of possession, which according to the order of law could and ought first to have been proposed and determined. Your fraternity therefore asked what is to be established in these matters. We, however,* answer your consultation in this way:

The possessory judgment which is proposed for recovering or acquiring possession may indeed be employed by one who has begun to vindicate the thing before the petitory judgment first instituted has been renounced or concluded. For it has been established by legal provision that one who has vindicated land from the person against whom he could have proceeded by the interdict *unde vi* may nevertheless institute the interdict while the judgment is pending; the other possessory judgments, which by their nature precede the vindication of ownership, are to remain in their force.

But if the petitory judgment has been renounced or concluded, so that the cause concerning ownership can now be determined by the decision of a definitive sentence, the possessory judgment is not to be employed while the cause remains undecided, lest lawsuits be heaped upon lawsuits and a way be opened to frauds—unless the judge who takes cognizance of the cause should see that this is expedient for a just cause, as, for example, when the inequity of the invader is readily inferred from manifest indications and a mischance or malice has taken from the despoiled person the faculty of proving ownership. Therefore, having considered these and other causes which contain equity or justly move the mind of the judge, we do not deny that, even after the cause has been concluded, a possessory action may be brought. [*Given at the Lateran on the fifth day before the Kalends of June.* 1202.]

Chapter VI

Latin source headnote: If proceedings have been conducted in the petitory and possessory actions together, they are determined by one sentence, and the possessory is put first in the determination; but the petitory prevails in execution.

The same, to the Bishop and Official of Saint Andrews.

When the beloved son—(*And below:* [*Cf. c.* 6, *On Arbitrators, I.* 43.]) To the fourth question, however, we answer briefly that, when proceedings have been conducted concerning the possessory and petitory matters together, both ought to be determined by one sentence. But although possession is to be placed first in the pronouncement, ownership ought nevertheless to prevail in the execution. [*Although, however, etc. Given at the Lateran on the thirteenth day before the Kalends of April, in the tenth year [of our pontificate].* 1207.]

Chapter VII

Latin source headnote: A benefice is adjudged to the person who proved that his collator was in possession of conferring it at the time of the collation; by this, however, the unsuccessful party is not prohibited from bringing an action concerning ownership of the right of conferring against the collator himself. This is what the whole letter intends.

The same, to the Bishop of Verona.

When formerly the question which existed between *the beloved son*, the archdeacon, on the one side, and the archpriest and canons of the Church of Vicenza on the other—(*And below:*) *Therefore, when the aforesaid archdeacon faithfully recounted these things before us,* because it was clearly established to us through *the same* attestations that the archdeaconry itself had been assigned without any protest of the canons by the bishops of Vicenza to the two archdeacons who had successively preceded him; and because the aforesaid canons ought not to have refused the judges *or requested a copy of the rescript*, since the cause had been delegated to the aforesaid judges with the assent of the proctors of both parties, *and the rescript had been obtained by those same proctors, nor ought they to have sought delays for deliberation when issue had been joined before the Apostolic See through the proctors of both parties*—we took care to adjudge the aforesaid archdeaconry to him by definitive sentence, *notwithstanding exceptions of this kind,* imposing perpetual silence upon the canons of Vicenza who contradicted the same archdeacon *concerning the stall assigned to the archdeacon and his other appurtenances*. Nevertheless, the question of ownership concerning the collation of the archdeaconry itself was reserved to them, if perhaps they should wish to contend concerning this against the Bishop of Vicenza, since a matter conducted between others ought not to generate prejudice against them. [*Given at Anagni on the third day before the Nones of January,* 1204.]

Chapter VIII

Latin source headnote: If one seeking a thing fails on one ground, he will be able to seek it on another ground. This is what it says according to the letter. Or thus: For one seeking a thing by right of ownership, it is not sufficient to prove possession. This is what it says in relation to the title.

Honorius III, to the Abbot of Saint Cyprian in the Diocese of Torcello and the Abbot of Saint Mary the New in Venice.

In the cause which was conducted between *our venerable brothers*, the Patriarch of Grado *and the Bishop of Castello*, on the one side, and the abbot and convent of the monastery of Saint George in Venice, concerning the subjection of that monastery, on the other, we found it proved for the same patriarch *that he was received processionally in that monastery with incense, holy water, and an icon; that when he returned from the step, the bells were rung there, as in the other churches of the city; and*, among other things, that the abbot sometimes went to his synod, paying him fifty *small* Venetian solidi over many years. *For the bishop, however, it was found proved that he confirmed the abbots of the same monastery, who rendered him obedience and reverence. The abbots of that monastery also came to the bishop's synods; when invited to funerals, he was received processionally with the aforesaid solemnity; and, similarly, when invited on the feast of blessed George, he received procuration there. They conveyed him in their boat on the feast of the Purification of the Blessed Virgin.*

Since the aforesaid patriarch and bishop had first proceeded in the possessory action concerning these matters, we restored them to the possession or quasi-possession of the aforesaid things. Yet because proceedings had nevertheless been conducted on both sides in the petitory action, and each party appeared to have brought its entire right into judgment, we, having inspected the privileges of our predecessors, by the counsel of our brothers decree that the monastery itself is free and pertains immediately to the Roman Church. We absolve it from the attack of the said patriarch and bishop in the aforesaid matters and in others which concern jurisdiction and subjection, notwithstanding the possession proved concerning the aforesaid matters, since they did not show that they had received such things for so long a time that the privileges of liberty were derogated by this. We reserve, however, to the aforesaid bishop those things which are specially reserved to him in the same privileges concerning chrism, holy oil, ordinations of clerics, and certain other matters.

In addition, since the patriarch proceeded concerning the aforesaid fifty solidi, which he sought as evidence of subjection, by the definitive sentence which he received against him concerning this we do not take away his power if he should wish to proceed concerning them by another right. [*Therefore to your discretion, etc. Given on the Nones of May, in the eighth year [of our pontificate].* 1224.]

Title XIII: On the Restitution of Those Despoiled

Chapter I

Latin source headnote: Against one seeking restitution, a defendant objecting concerning ownership is not to be heard unless the plaintiff consents.

Gregory IX, to the Bishop of Constance.

Although greatly [*the scourge of blindness borne by Philagrius, the bearer of the present letters, invites your fraternity to preserve justice for him, nevertheless, because he wished you to be made more prompt by us to restore the things which he asserts are prejudicially detained from him, we have foreseen that the present writing should be directed to you.*] *But* Philasius, a blind man, has complained to us that his field, *together with his vineyard*, has been unreasonably occupied by men of *your* church. If this is so, although before every contention the possession violently taken from him ought to have been restored to him, nevertheless, because [*our common son*] Eventus, a deacon of that church, with his consent undertook that he would lawfully prove that the said field belongs to that church's right, *therefore* inquire into the truth; and, if this is proved, it is to be said to him that he should withdraw from his contention; otherwise, *before every contention*, let the thing taken from him be returned to him. *So that thereafter cognizance concerning*

ownership may remain unimpaired for each party, etc. He indicated furthermore, etc. (*Cf. c.* 4, *On Payments, III.* 39.)

Chapter II

Latin source headnote: A renunciation made after spoliation does not stand against one seeking restitution of a benefice, because it is presumed not to have been voluntary. And I deliberately added "because it is presumed not to have been voluntary," since, even if it were proved voluntary, such an exception or renunciation ought to stand in beneficial matters.

Alexander III, to the Bishop of Worcester.

You shall take solicitous *and diligent* care to investigate at what time H. renounced the church; and if it is established to you that he *had been* despoiled when he renounced the same church—*whether he renounced on this occasion only, or whether he renounced the aforesaid church on several occasions, provided that he renounced while despoiled*—you shall not admit against him, before he has been restored, the witnesses of the other party concerning an oath and a renunciation voluntarily made, because it is not likely that one who renounces while despoiled has voluntarily renounced his right. But you shall not postpone receiving the witnesses of the same H., through whom he intends to prove for himself that he was violently despoiled of the aforesaid church, provided that they are suitable.

Chapter III

Latin source headnote: One seeking restitution of a benefice is not heard, even if he proves spoliation, if it is proved that he had previously resigned that benefice voluntarily.

The same.

Having received the complaint of P., a cleric, that he had been violently despoiled of the church *of Procebrant*, we, [*by commanding*] *through apostolic writings, if we remember correctly,* gave you a mandate that, if this were established, you should cause it to be restored to him *by our authority*. When this became known, it was answered by the adversary, *as we are told*, that this ought not to benefit him because he had of his own free will abjured the aforesaid church before the Archbishop of York, legate of the Apostolic See. *But because we have not written to unlearned men, but to discerning persons, and because it belongs to us to discern what reason dictates, by the authority of the present letters* we command your discretion that *you diligently and subtly inquire into the truth of the matter*, and, if it is established to you that the aforesaid P., compelled by no fear or force but voluntarily, abjured the aforesaid church in this manner, you shall impose perpetual silence upon him concerning this, *every occasion and appeal being removed*.

Chapter IV

Latin source headnote: In an interdict for retaining possession, the defendant fails when his abjuration has been proved. This is what it says in relation to the title.

The same, to the Bishop of Worcester and the Archdeacon of Ely.

Having heard the complaint of *our beloved son* T., a cleric *of our dearest son in Christ, the illustrious King of the Scots*, that H., parson of the church of Sander, was unduly troubling him concerning his church of Pelen, *which the aforesaid T. had obtained, then free and vacant, upon the presentation of the same king, although*

the same H. is said to have sworn voluntarily that he would move no question against the aforesaid T. concerning the church of Porten, we gave a mandate to our venerable brother the Bishop of London and to you, son archdeacon, that, *after the truth of the matter had been more fully investigated*, if it were established to you that the aforesaid H. held the parsonship of another church, or had confirmed by a voluntarily furnished oath that he would not thereafter move a question against the aforesaid T. concerning the same church, *you should thereupon, appeal being removed, impose perpetual silence upon him and* restrain him from troubling that man concerning this.

But afterward a messenger of the aforesaid H., approaching our presence, proposed to us with firm assertion that the same H. had been despoiled of the same church through violence; and for that reason he obtained our letters to you, directing that, if it were established to you after the truth had been learned that H. himself had been despoiled when he renounced that church, you should by no means receive against him the witnesses of the other party concerning an oath and renunciation voluntarily made, but rather should not delay to receive the witnesses of H. himself, through whom he intended to be able to prove that he had been violently despoiled of the aforesaid church, provided that they were suitable; and that, according to their depositions and the reasons and allegations produced on this side and that, you should judge in that cause what was just, the obstacle of appeal being removed, notwithstanding [our] letters, if any others had been obtained by either party, *or the form which we expressed in other letters obtained concerning this. We added, furthermore, that if anything had been changed in the cause itself after the messenger of the aforesaid Henry began his journey to come to our presence, before entering the principal cause you should, every contradiction and appeal ceasing, restore the whole cause to the state in which it was known to have been when the messenger of H. himself undertook that journey, unless perhaps in the meantime the same H. could come to an agreement concerning the church itself with the other party by voluntary will.*

But now it has become known to us from the letters of the aforesaid bishop and from yours, son archdeacon, that you, [*as you ought*], *following the tenor of the former letters, cited the parties with due solemnity*. When, however, *after several citations a peremptory day was finally appointed, the contumacy of the aforesaid H. had been more fully established to you by lawful proof*, and when you learned from the testimony of *suitable persons that the often-mentioned H. not only held the parsonship of another church but also, of his voluntary will, had abjured the church of Pelen* in perpetuity *in the face of the Church*, you prohibited him from thereafter troubling the said T. concerning this.

Although, however, the messenger of the same H. obtained the later letters, *as we have said*, containing a different form—that, notwithstanding letters obtained by the other party, anything changed in the cause after the same messenger began his journey to come to us ought to be revoked—nevertheless, because we did not understand, nor ought it to have been understood, that what had been done by you under the authority of our letters should be *rendered void*, but only if anything had been changed by presumption or violence, *by commanding your discretion through apostolic writings* we order that you shall by no means attempt, on the occasion of those letters, to revoke the sentence which you rendered before receipt of the later letters; and, if you have decreed anything against that sentence, you shall take care to revoke it, the obstacle of appeal being removed, *and shall by no means permit the aforesaid H. to proceed against the same sentence, but rather, contradiction and appeal being set aside, shall cause the sentence to be inviolably observed by our authority*. But if the sentence was rendered after receipt of the subsequent letters, notwithstanding that *sentence*, you shall proceed *in the cause* according to the tenor of *those letters*, appeal being set aside, *provided that the aforesaid H. was despoiled through violence and furnished that oath while despoiled*.

Chapter V

Latin source headnote: The question of noncanonical institution cannot be raised against one seeking restitution of a benefice.

The same, to the Bishop of Brescia.

In your letters—(*And below:* [*Cf. c.* 9, *On the Office of a Delegated Judge, I.* 29.]) Concerning that question—namely, when someone says that he *has been* violently ejected from possession, and his adversary says that he was not canonically instituted—we answer that proceedings concerning the violent ejection ought to be conducted before proceedings concerning canonical institution, because even a robber must be restored according to the rigor of law. [*Likewise, when, etc.* (*Cf. the following chapter.*)]

Chapter VI

Latin source headnote: An exception of crime does not stand against one proceeding by the interdict *unde vi* or *quod vi aut clam*.

The same, to the Bishop of Exeter.

Likewise, when someone says that he has been violently ejected from possession, or that his adversary has secretly entered the possession, and the adversary alleges a crime against him in order to repel him from his contention *by reason of the crime*, it does not *indeed* occur to us that the latter's objection ought to be admitted, or that the execution of the principal cause ought for this reason to be delayed, because he cannot proceed criminally against him before restitution, since he is presumed to be his enemy.

Chapter VII

Latin source headnote: One despoiled even by a judge, the order of law having been omitted, is to be restored before all else.

The same, to the Archbishop of Canterbury.

Upon the complaint of the cleric R., *the bearer of the present letters*, we learned that, *while he was devoting himself to scholastic disciplines*, you despoiled him, [*without his having been cited*], of the church of Werfort without a judgment. But because it does not become your honor to despoil the clerics of your jurisdiction, without a manifest and reasonable cause, of their benefices—clerics for whom you are bound to provide with paternal foresight—[by commanding] *your fraternity through apostolic writings* we command that, if it is so, you restore to the aforesaid cleric the aforementioned church together with the revenues received from it, and permit him to possess it in peace. But after restitution has been made, if you wish to propose anything [*thereupon*] against him concerning the aforesaid church, you will be able, personally or through your sufficient representative, to proceed according to judicial order with the same R. before *our venerable brother*, the Bishop of Exeter, delegated by us; and you shall firmly receive and observe *what* [*he*] *shall thereupon decree, for we have committed the cause to the same bishop for determination*.

Chapter VIII

Latin source headnote: A spouse is restored to a husband who proves betrothal and carnal union and gives security for her safety, unless the husband's cruelty is great.

The same.

From that transmitted to us—(*And below:*) *Because the truth could not become clear to us, we have considered that the cause should be committed to your experience; through apostolic writings* we command your fraternity that, if it is established to you that the aforesaid woman had been lawfully betrothed to the aforesaid knight and carnally known by him, you shall cause her to be restored to him, sufficient security nevertheless having been received that he ought not to inflict any harm upon her. But if the husband persecutes the woman with such mortal hatred that she deservedly distrusts him *and holds him suspect*, she shall be carefully committed for safekeeping until the decision of the cause to some upright and honorable woman, in a place where neither the husband nor his relatives can inflict any violence upon the woman.

Chapter IX

Latin source headnote: Through payment of the pension from the donated thing, made to the donee with the donor's authority, possession of the donated thing is acquired for that donee to such a degree that, if he is expelled from it, he will be able to proceed by the interdict for recovering possession.

The same.

When *our beloved son* G., canon of Holy Trinity of Hasul, came to us, having been sent by his prior and chapter, he proposed in our hearing that, when *our venerable brother* the Archbishop of York had granted them the church of N. and confirmed it by his own writing, in such a way that after the death of G. *of Pontino*, the cleric who held the aforesaid church *at that time*, it would in every way be applied to their uses, and meanwhile, *by* the authority of that archbishop, the same G. would pay an annual pension to those canons, *we afterward, having diligently inspected the writing of that archbishop, considered that the same grant should be confirmed by apostolic authority. But when the aforesaid cleric had died, the said canons, although they had not been inducted into possession of the aforesaid church by the archbishop himself, nevertheless, placing very great confidence in the grant and our confirmation, entered the church itself lest they be troubled by a certain cleric who was endeavoring to harass them concerning that church; and they appealed to our hearing both against the archbishop himself, by whom they feared they would be aggrieved, and against the aforesaid cleric. While two of their brothers were prosecuting the appeal made by them, the often-mentioned archbishop caused the grain and all the goods of the church which the aforesaid cleric G., when dying, left there to be carried away against the will of the aforesaid canons—which we can scarcely believe.* (*And below:*)

Master M. and A., clerics and messengers of the same archbishop, who were present, steadfastly excused him concerning these matters, and added that a grave injury had been inflicted upon the aforesaid archbishop by the aforesaid canons, because, even if they had letters of grant from him, they ought not, after his authority had been disregarded, to have entered into possession by themselves. We therefore answer that, if the aforesaid canons, during the cleric's lifetime, received an annual pension from the aforesaid church under the authority of the same archbishop, then, when that cleric was dead, although they did not seek the authority of the same archbishop, they nevertheless did not enter possession wrongfully, since, as is provided *in the laws of secular princes*, he possesses in whose name possession is held.

We commit the cause itself to you, in whose prudence and integrity we confide, commanding your fraternity through apostolic writings that, having summoned the parties before your presence, if their assertion is established, before entry upon the principal cause you shall by our authority cause the grain and all the goods of the church carried away

after the appeal by command of the archbishop himself to be restored, the obstacle of appeal being removed. Thereafter you shall earnestly admonish the archbishop to hold his grant ratified and henceforth cease to harass the aforesaid canons concerning the aforesaid church. But if he is unwilling to acquiesce in your admonition, you shall diligently hear the cause concerning the church and determine it without acceptance of persons, the evasion of appeal being removed.

Chapter X

Latin source headnote: If, while the plaintiff proceeds in the petitory action, the defendant brings a possessory action concerning the same thing, proceedings are conducted only in the possessory action, the petitory being suspended.

Lucius III, to the Archdeacon and I., Archpriest of Tours.

You should know that it has reached us from the complaint of the woman B. that, when the knight C. had joined her to himself in marriage and, treating her with marital affection, had begotten a daughter from her, he afterward removed her from himself without a judgment of the Church and obtained letters to judges for accusing the marriage on the ground of consanguinity, the obstacle of appeal being removed. But when, before the woman was cited by the *delegated* judges, she had petitioned through the diocesan bishop that her husband be restored to her, and for this reason *she* had sent her own messenger to us, finally, having been established before the aforesaid judges, now personally, now through a proctor, she petitioned both before entry upon the cause itself and afterward that her husband be restored to her. The judges, however, restitution being *entirely* denied —which ought not to have been done—wished to proceed in the principal matter, whereupon she appealed *from such a grievance to* our hearing.

Therefore, because we ought to impart apostolic protection to those unjustly aggrieved, by commanding your discretion through apostolic writings we order that, if it is so, you shall cause *her own* husband to be restored to the *aforesaid* woman, *every contradiction and appeal ceasing*, revoking as void the things done after her appeal, and afterward shall hear the cause concerning the marriage *attentively* and determine it with a canonical end. *Given at Verona on the twelfth day before the Kalends of November.*

Chapter XI

Latin source headnote: A violent possessor is compelled to restore the thing together with the fruits, including those which could have been received, to repair the losses, and to make satisfaction for the injuries.

Celestine III.

A grave complaint [has come] to us—(*And below:*) *Therefore, through apostolic writings* we command *and firmly enjoin* your fraternity that, *having summoned the parties*, if the aforesaid matters are established to you, you shall compel the aforesaid archdeacon, by ecclesiastical constraint, relying upon our authority, every favor, fear, and affection being set aside and every delay, contradiction, and appeal ceasing, to restore in their entirety the things taken from the brothers of the aforesaid monastery, *to* repair the losses fully, and to make competent satisfaction for the injuries inflicted; then you shall admonish the archbishop to hold his grant ratified and henceforth cease to harass the aforesaid canons concerning the aforesaid church. But if he is unwilling to acquiesce in your admonition, you shall compel him, *being attentively provident* that you cause to be rendered to them, *by the aforesaid*

sentence, the obstacle of any appeal being removed, not only the fruits received by the new and violent possessor, but those which the former possessors would have received if it had been lawful for them to possess.

Furthermore, if any persons should determine to oppose the restoration of the things taken to the aforesaid brothers according to our mandate, you, supported by our authority, shall strike them with a sentence of anathema, notwithstanding appeal. But if the aforesaid archbishop perhaps does not come at the citation of your admonition, or is unwilling to obey your mandate, you, having received the witnesses of the monastery of Dol, shall proceed in the whole business according to the aforesaid form and take care to execute it with every solicitude as we have said, appeal ceasing, providing in every way that you do not permit the liberties granted to the aforesaid monastery by our predecessors and by you to be diminished or infringed by anyone.

Chapter XII

Latin source headnote: One who has entered possession without the knowledge of the lord to whom it pertains can, as soon as the lord learns of it, be repelled by that lord even violently; nor from such repulsion does a possessory interdict lie against the lord for the person repelled. This is what it says.

Innocent III, to the Bishop and Chapter of Tortona.

Formerly, we remember committing, *under a certain form,* to *the beloved sons,* the abbots of Lucedio and La Colomba, the cause which was conducted between you, in the name of the Church of Tortona, and *the beloved sons B.,* the master and brothers of the Knights of the Temple in Lombardy, concerning the house of Calventia. *The abbots themselves, having summoned the parties and issue having been joined in their presence, received the witnesses produced by each party; and, when renunciation had been made, they solemnly published their depositions on each side and, reducing them to writing by a public hand, remitted the fully instructed cause to our presence. We therefore granted as auditors to the beloved son C., canon and proctor of the Church of Tortona, and to the aforesaid master our beloved sons I., cardinal priest of the title of Saint Stephen on the Coelian Hill, and H., cardinal deacon of Saint Eustace. Before them it was proposed on your behalf that, when formerly certain Humiliati had sought from V., Bishop of Tortona of good memory, license to construct a hospital and oratory in the place of Calventia,* the Bishop of Tortona redeemed certain possessions *from certain knights who held them in fief from the Church of Tortona, and granted them* to the Humiliati *at their request* under this condition: that *in honor of God and the Blessed Virgin* they would construct an oratory and hospital there in the name of the Bishop of Tortona; would furnish three solidi as an annual payment to the Bishop of Tortona; and the person placed over that place would receive investiture from him and, for himself and the other brothers, would make manual obedience to him and his successors, the bishop nevertheless retaining for himself lordship of the place.

But the said master, aspiring to that house *and wishing to join it to the house of Caselle,* so circumvented them that, without your knowledge, they delivered themselves and their things into his hands, this condition nevertheless being added: if what they did pleased you, without whose assent they asserted that they could do nothing. *The master accepted the condition added and affirmed that otherwise he would not receive them.* (*And below:*)

Then the master, approaching Calventia, took from there the ornaments of the church, the instruments of the house, and the books, and caused ninety sheep to be led away. Afterward, returning to you when what he had sought had been denied him, he added that he was prepared to render you an account if perhaps he had offended you. But you,

observing his malevolent intention, strictly prohibiting him from intermeddling with the aforesaid house, appealed to the Apostolic See. And when you, brother bishop, heard what had been done, all of you together approached the same house and cast out from it those whom you found there, left by the master for the custody of the house, lawfully repelling force with force, as all laws permit. Hence, since possession of the aforesaid house had been delivered to the same master under a condition, the condition not existing, the delivery was not valid. Furthermore, since the same master secretly entered that house, no prejudice was generated against you whereby you could not repel him when this came to your hearing, especially since the true lord either moved a controversy against him, or he suspected, or ought to have suspected, that he would. (*And below:*)

Understanding that the aforesaid house had been delivered to the same master under a condition, and that no prejudice had been inflicted upon your right by the fact that the same master, not ignorant of your right, took possession without your knowledge—especially since, immediately when this became known to you, you determined that force should be repelled with force—and that the same *master* by his own temerity entered possession without the knowledge of you, to whom he knew that possession pertained and whom he ought to have suspected would move a question against him, *by the counsel of our brothers* we absolve the *said* proctor, personally and in your name, from the attack of the master himself, in the name of the house of the Knights of the Temple, with respect to making the restitution which he sought, *saving to him the question of ownership, concerning which nothing was conducted in this judgment, as the aforesaid Abbot of Lucedio explained to us orally*. We *nevertheless* decree that you furnish due satisfaction to the *same* master if, in defending your right, you perhaps exceeded the measure to the injury of him or of the house of the Knights of the Temple.

Chapter XIII

Latin source headnote: If consanguinity in a prohibited degree is objected against one seeking restitution of a spouse, and proofs ready at hand are offered, then, after an oath concerning absence of malice has been received from the objector, restitution will be denied with respect to the marriage bed and made with respect to the other matters. But if the proofs are not ready, full restitution will be made, unless the husband's cruelty is great.

The same, to the Archdeacon of Bourges.

We *recently* received your letters, *containing* that, when a certain matrimonial cause was being conducted in your presence while *our venerable brother* the Archbishop of Bourges was acting in distant regions, a woman named Guillelma most urgently petitioned to be separated from B., her husband, to whom she alleged that she was joined in the fourth degree of consanguinity. *Accusers also appeared, producing witnesses and a chart setting out the line of consanguinity on both sides; they said that they had been absent at the time the marriage was contracted and that they were prepared immediately to prove the things which they proposed.* The husband, *on the other hand*, petitioned that his wife be restored to him, alleging that she had departed from him by her own temerity.

Moreover, the wife's party replied that restitution should be entirely denied, both on account of the future danger of incest and because, with the proofs ready and at hand, what was maintained could be demonstrated without evasion. In addition, it alleged that the husband's cruelty was known: he possessed impetuous levity and bestial cruelty; and, if he had free power over his wife when she had been restored to him, her friends feared that danger of death or bodily torment would thereby threaten her, and thus they would desist from the accusation, preferring that she live in whatever manner rather than perish. They added, nevertheless, that she had departed from the husband with

permission, in tears and unwilling. But the knight himself nevertheless petitioned that his wife be restored to him freely and peaceably; and, lest otherwise be done, he appealed to the Apostolic See. Therefore, since exceptions of this kind are rather often proposed in matrimonial causes, you sought to be instructed by an apostolic rescript as to what is to be done in such matters, *eliciting from the foregoing, as from a certain theme, many questions.*

First, you asked whether, when some degree of consanguinity is alleged in which the Apostolic See cannot and is not even accustomed to dispense, and proofs are ready and at hand, restitution is to be granted or denied. *Second, you asked whether the same rule of law exists if some dispensable degree or another dispensable impediment is alleged and proofs are similarly present—whether restitution ought to be granted or denied. Third, you asked whether, if the husband's cruelty and savagery are known to the judge, so that, angered because the controversy was moved, he is likely to treat his wife with torments and afflict her with injuries, and the accusers thus desist from accusing because they fear the woman's death, this furnishes in the first or second case an aid for denying restitution. Finally, you asked whether, if restitution is to be denied in any of the aforesaid cases and appeal is made to the Apostolic See, deference should be given to an appeal of this kind.*

Indeed, concerning the resolution of the proposed question, different persons hold different opinions: some assert that restitution is to be made *in the aforesaid cases*; others hold the contrary; and some choose a middle way, saying that it is sometimes to be made and sometimes *indeed* entirely denied.

The first appear to be assisted by the decretal letter of Pope Lucius *of good memory, our predecessor*. In it he reproved certain delegated judges who denied to a woman, despoiled and seeking her spouse, the restitution of a husband who had dismissed his wife without a judgment of the Church and afterward objected consanguinity against her; and he commanded that the woman so despoiled first be restored to him, and that cognizance afterward be taken of the matrimonial cause. The danger of incest, however, appears to oppose their assertion. But they answer that the fear of incest is empty, since even after the benefit of restitution has been obtained, one who has knowledge of consanguinity is neither permitted to demand the marital debt against conscience nor bound to render it, because, if such a person acts otherwise, he builds toward Gehenna, just as does one conscious of consanguinity concerning whose marriage no question is moved.

The second assertion, however, is supported by the oracle of Pope Clement *of happy memory, our predecessor*. When he was asked whether, when a certain woman was claiming a certain man as her husband and he, in order to repel her, interposed an exception of consanguinity, the impediment of consanguinity should be dealt with before sentence was rendered concerning the marriage, he answered the inquiry made in this manner: because, when the exception is proved, the principal question is extinguished, cognizance must first be taken of the exception before proceeding to the point of definition, since in many cases restitution is also deferred according to the canonical sanctions.

It appears not unfittingly adapted to the final opinion that, in degrees of consanguinity prohibited by divine law, access to restitution should be closed, but that, in degrees forbidden by human constitution, restitution should have its place with effect, since there can be no dispensation in the former, but dispensation can be granted in the latter, as blessed Gregory and many others granted dispensations. Hence one who, at the command of the Church, renders the marital debt in this circumstance does not sin.

We, however, at present reprove none of the aforesaid opinions, nor do we wish any prejudice to be generated against any of them by our response, although the aforesaid mandate of Pope Lucius relates to the possessory action, while the response of Clement, *our father and predecessor*, relates to the petitory action. Furthermore, since *that* woman who has knowledge of consanguinity—especially within the degrees prohibited by divine law—cannot be carnally joined to a man of this kind without mortal sin, because everything which is not from faith is sin, and whatever is done against conscience builds toward Gehenna, restitution would in vain be adjudged in such a case to the person despoiled. For in this matter she ought not to obey the judge against God, but rather humbly to endure excommunication. Thus a difficulty would arise as though insoluble, because on account of the sentence she would have to render the marital debt, and on account of conscience she ought not to render *the debt*. Hence it would happen that they would be gravely impeded, and a snare would be prepared for each of them, since they could not be joined carnally to each other, nor could either be matrimonially joined to another.

For this reason it appears better *to us* that, when consanguinity is objected—especially in the degrees prohibited by divine law—and proofs ready at hand are immediately offered, restitution should *indeed* be adjudged in other matters, but, for greater caution, after an oath has been received that an objection of this kind is not made maliciously, restitution with respect only to carnal union, especially if reputation agrees, is to be deferred until, the proofs having been heard and discussed, the cause is determined without evasion, since it is better for each to be dispatched in this way than to remain impeded in that way.

But if she does not have proofs ready immediately, but awaits longer delays, because there is a presumption against her who departed from her husband without a judgment of the Church solely by her own temerity, she ought to be compelled to full restitution by ecclesiastical censure. Nevertheless, by refusing association in the marriage bed she ought humbly to endure that censure until she offers proofs that have been prepared; and then, having sought absolution, she will be absolved according to the form of the Church. But before a command is issued to her under the obligation of an oath, let proceedings be conducted after the proofs have been received, in the manner stated above. If, however, the husband's cruelty is so great that sufficient security cannot be provided for the trembling woman, not only ought she not to be restored to him, but she ought rather to be removed from him; otherwise, sufficient security having been provided if this can be done, the spouse assuredly appears to be restored to the husband before cognizance of the cause.

Chapter XIV

Latin source headnote: By the mere conveyance of a woman to a man's house, when no betrothal preceded or the betrothal was invalid, possession is not acquired; hence, when she departs on her own authority, restitution does not lie.

The same, to the Bishop of Volterra.

It was proposed *before us* on behalf of the woman M. that, while she was *still* within the years before puberty, a certain paternal uncle of hers wished to join her *in* marriage to the son of H., a citizen of Siena, who was not yet seven years old. When she had been conveyed to the house of that *citizen*, and when she reached marriageable years, being unwilling to ratify what had been procured in this matter by *her said* uncle, she sought from *our venerable brother*, the Bishop of Siena, license to marry another.

And when that bishop had cited the parties, and the aforesaid M. appeared in judgment through a suitable proctor, seeking that the possessions and other things given for her in the name of dowry be restored to her, while the other party sought restitution of that woman, asserting that she could not conduct the cause through another but ought personally to attend its treatment, the aforesaid bishop, doubting what he could decree by law concerning these matters, suspended the course of the business, as he informed us by his letters.

Therefore, because we do not believe it doubtful that this woman—although she is said to be a minor—*can* conduct the matrimonial cause through a proctor, and that restitution ought by no means to be made to the other party which first petitioned that the woman be restored to it, since that party lacks every advantage of right or possession, because by *the aforesaid* conveyance alone, which no betrothal or legitimate consent preceded and which none followed either, no binding bond was contracted between them, *so that an end may be imposed upon the lawsuits, through apostolic writings* we command your fraternity that, if it is so, notwithstanding the aforesaid exceptions and *having summoned the parties*, you shall hear what the parties shall determine to propose on this side and that, and decree, appeal being removed, what is canonical, [*causing what you decree, etc. Given at the Lateran on the third day before the Ides of January, in the eleventh year of our pontificate.* 1209.]

Chapter XV

Latin source headnote: The interdict *unde vi* does not lie against one who neither despoiled, nor commanded that spoliation be committed, nor ratified the spoliation.

The same.

When formerly the proctors of *A., our venerable brother*, the Bishop of Como, and *brother G., of the beloved sons*, the brothers of the Hospital of Jerusalem, had approached the Apostolic See *and presented to us the instruments and the acts of the cause which was conducted between them concerning the church and hospital of Monte Cinaro, as they had been carried out in the presence of our venerable brother the Bishop of Pavia, who had taken cognizance of the cause by our delegation, we, having diligently inspected the things done before that bishop, decreed that they should be held as not done, since it was established to us that he had not been a judge in that cause, as he himself finally acknowledged*. We considered that the same cause, *with the assent of the parties*, which was conducted between them concerning the church and hospital of Monte Citano, should be committed to *the beloved son*, the Abbot of Accon, in such a way that he would hear all things pertaining both to the possessory and to the petitory judgment which either party should determine to propose, and would determine the cause itself with a due end.

Before him *afterward* the proctor of the Hospital of Jerusalem petitioned that the aforesaid *church and hospital*, together with their possessions and appurtenances, which *the said* Bishop of Como held, be restored to him, asserting that they belonged by right to the Hospital of Jerusalem and that the Hospital had possessed them for a rather long time. To these things the bishop's proctor answered that he neither knew nor believed that the aforesaid things had *ever* been possessed by the Hospital of Jerusalem or in any way pertained to it; rather, the Bishop of Como reasonably detained them, since they were situated in his diocese. Therefore, when each party produced witnesses to establish its contention, the said abbot, *afterward having inspected the attestations, arguments, and instruments of both parties*, condemned the bishop's proctor to restitution of all the aforesaid things. (*And below:*)

But recently, when the proctors of each party appeared *for this reason* before us, *the acts of the former judgment having been faithfully presented to us*, we diligently examined the cause itself, *sometimes personally*

and sometimes through our beloved sons P., cardinal priest of the title of Saint Marcellus, and R., cardinal priest of the title of Saint Anastasia. It indeed appeared to have been proved through the witnesses that *Cratus*, the messenger of the Bishop of Como, formerly took the crosses from the Hospitallers, prohibiting them from returning to the aforesaid church or hospital, and that the bishop possessed all the aforesaid things; hence the proctor of the Hospitallers petitioned that the said sentence of restitution be confirmed *by apostolic authority*.

On the opposite side, however, it was proposed that, even if it had perhaps been sufficiently shown through the witnesses that the Hospitallers had been despoiled by the bishop's messenger, nevertheless, since it was not established that he did this by the bishop's command or that the bishop ratified his deed, restitution could not claim a place for itself, although it was established that the bishop held the aforesaid things, which he assuredly possessed by right, since they pertained to him and were situated in his diocese. But to this the other party replied that, although the bishop's command or ratification was not clearly proved by the statements of the witnesses, nevertheless, because the judge could have informed the movement of his mind from other grounds, a presumption should deservedly be made in favor of the sentence. Therefore, having understood these and the other things which the proctors of both parties took care to propose, we, reviewing *more diligently* the acts of the former judgment, *which had, as stated above, been fully and faithfully presented to us*, because it could not be established to us—either by the statements of the witnesses, or by confessions of the parties, since none at all had been made in judgment, or even by instruments which did not in any way deal with the spoliation, or *even* by the evidence of the fact—that the Bishop of Como had despoiled the *aforesaid* Hospitallers, or commanded them to be despoiled, or at least ratified the spoliation committed, *by the counsel of our brothers* we pronounced in the aforesaid question that the interdict *unde vi* had by no means had place. Justice requiring it, we quashed the sentence of restitution rendered by the aforesaid abbot, although the adverse party proposed that a presumption should be made in favor of the judge's sentence, since he could have informed the movement of his mind from other grounds.

Chapter XVI

Latin source headnote: An exception of poverty, the truth of which is established, when interposed by a cleric, prevents execution of a sentence, even one rendered in the possessory action. This is what it says, comprehending the sense of the letter and the true reading.

The same.

We remember formerly giving you a mandate that you should compel *our venerable brother*, the Bishop of Oviedo, to due restitution to the party of the diocese of Zamora which he held, together with the fruits received, [*if it should happen that the beloved son Rainerius entered upon the way of all flesh before he fulfilled the apostolic mandate concerning this.*] But because an action which the debtor's poverty excludes is empty, [*through apostolic writings*] we command your fraternity that you shall not compel *the bishop himself* to restitution of the fruits before he himself has been restored in such a manner that he can restore what he received from another's revenues. [*We, however, etc. Given at Rome, etc., on the fifth day before the Kalends of June.* 1198.]

Chapter XVII

Latin source headnote: By proof of an excommunication, quasi-possession of jurisdiction is not proved, although the excommunication was observed for several days; therefore one seeking

restitution, having proved this alone, fails. This is what it says with respect to its sense.

The same.

Formerly, when a question arose between you on behalf of your abbey and *our venerable brother*, the Bishop of Paris, in the name of the Church of Paris, concerning possession of parochial right in the parish of Mont—(*And below:*) We, considering that from the sole fact that the people of the aforesaid parish abstained from divine services for several days through fear of his sentence, the same bishop had acquired no possession of parochial right over them, and that it had not been proved in any way that, at the time at which he rendered the sentence, he possessed parochial right over them or had even possessed it previously, could not by law adjudge restitution to him, since it was not established that he *had been* despoiled.

Chapter XVIII

Latin source headnote: One who knowingly receives from a despoiler a thing that has been invaded is bound to restore it to the person despoiled, although the latter does not prove ownership.

The same, in the General Council.

It often happens that, when an *unjustly* despoiled person's thing has been transferred by the despoiler to another, while the despoiled person is not aided against the possessor by the benefit of restitution, he loses the effect [of his right] because of the difficulty of proofs of the right of ownership, the advantage of possession having been lost. Hence, notwithstanding the rigor of civil law, we decree that if henceforth anyone knowingly receives such a thing, since he succeeds, as it were, to the despoiler's vice—because there is not much difference, [*especially*] with respect to peril of the soul, between unjustly detaining and invading another's property—the person despoiled shall be aided against a possessor of this kind by the benefit of restitution.

Chapter XIX

Latin source headnote: One who occupies a particular place in which someone freely possessed rights can, if through that occupation the possessor cannot freely possess his rights as before, be sued in a possessory action for freedom of possession; and restitution cannot be made unless he leaves the place in its former freedom. This is what it says, very exceptionally.

Gregory IX, to the Bishop of Lucca.

When the citizens of Pisa and Lucca had been gravely afflicted and worn down by the grave discord which they had long had between themselves—(*And below:*) we gave a mandate to P., our subdeacon, that, after the possession which it was established that the Church of Lucca had held in certain castles had first been fully and freely restored to it as it had held it at the time the discord arose, and after sufficient security had been received concerning that possession about which doubt arose that the aforesaid Pisans would obey the law before us, he should relax the sentences rendered against them for the occupation of those castles. (*And below:*)

Therefore, when the Pisans asserted that it stood through you that restitution was not made to you according to our mandate, and urgently petitioned that the aforesaid subdeacon relax the said sentences, he, having received securities for obeying justice before us, relaxed those sentences.

Because of this, you, considering yourself aggrieved, approached our presence, intending to attack the proceeding of the often-mentioned subdeacon. (*And below:*)

Furthermore, two things were contained in our mandate: namely, that the possession which it was established that the Church of Lucca had held at the time the discord arose should first be restored to it; and that restitution of the same possession should be made fully and freely, as it had held it at the aforesaid time. The first of these related to the fact, but the second to the manner. Hence, although, as the party of the Pisans said, the subdeacon himself was unable in fact to fulfill the form of the mandate because he could not cause possession of the castles to be restored to you—a possession concerning which he had no established evidence—and, even according to what you yourself said, possession of the rents and pensions could not be restored to you because you had not been despoiled of it, there was nevertheless an error in the manner. For he ought to have caused the Pisans to leave to you, fully and freely, the possession of the pensions and rents which it was established by their confession that you held in the aforesaid castles, just as your church had held it at the time the discord arose. This assuredly could not be so unless the Pisans entirely relinquished the castles themselves, because, while they detained the castles and the fortifications of the castles in which you receive the said pensions and rents, you could not hold them fully and freely as you held them when they did not detain the same castles at all, because, for as long as they detain them, it is left in their power not to admit you or to repel you whenever they wish. Therefore, having diligently heard these things, by the counsel of our brothers we adjudge a proceeding of this kind void.

Title XIV: On Fraud and Contumacy

Chapter I

Latin source headnote: A defendant who did not admit into possession a person who was to be sent into possession at the judge's command will not, according to canonical equity, be punished if within a year he gives security to submit to the law. This is what it says.

Alexander III, to the Bishop of Hereford.

In addition, since it frequently happens that a plaintiff is to be sent into possession for the purpose of preserving the property because of the absence of the adverse party, and because of the latter's fraud or power the *plaintiff* cannot obtain the thing to be preserved, while, as the end of the year approaches, the defendant offers the security due, lest he lose possession, your fraternity asked us with what kind of penalty the defendant is to be punished because he did not obey the command of the judge. To this we say that in ecclesiastical persons and affairs the rigor and severity of the law is not required *nor exercised;* rather, since justice is not endangered on this account, it ought patiently *to be tolerated and* admitted when the defendant binds himself by security to submit to judgment.

Chapter II

Latin source headnote: Because of a defendant's contumacy, a judge can sequester the thing sought and condemn the contumacious person in the expenses which the plaintiff incurred because of his contumacy or fraudulent exception. This is what Panormitanus says.

The same, to the Abbot of Ramsey and the Archdeacon of Ely.

We learned from your letters *directed to us* that, when we considered that the cause conducted between *our beloved sons*, the monks of Etoll and the canons of Lincoln, *and also Gervase, a cleric*, concerning the churches of V. and M., should be committed to you, and the canons, although lawfully cited, contumaciously absented themselves, you—although the monks were to be sent into possession of the things sought on account of the contumacy of the adverse party—nevertheless, wishing to act more mildly with them out of regard for their religious state, caused the possession to be sequestered, so that at least in this way the canons, affected by weariness, would be compelled to submit to judgment.

But finally, *when the parties had been established in your presence and the aforesaid* monks petitioned that the churches be restored to them, the canons answered that your authority had wholly expired because they had obtained letters *from us* to other judges which appeared to prejudice the former letters. But because no mention of the former letters was made in the later ones, nor were the names of the churches contained in them which had been placed in the former ones, but it was said indefinitely, "concerning certain churches," we, considering that malice and fraud ought to protect no one, *and being unwilling to leave so great a mockery unpunished, by commanding your discretion through apostolic writings*, order that, *when you are requested concerning this, you shall summon the parties before your presence and* determine the aforesaid cause according to the form of the former letters, notwithstanding the later letters, causing the expenses which the monks are known to have incurred because of this to be restored to them by the canons.

Chapter III

Latin source headnote: When the plaintiff is contumacious, witnesses ought to be received and sentence rendered, even when issue has not been joined, at the defendant's urging. This is what it says according to the common understanding.

The same, to the Bishops of Exeter and Winchester and the Abbot of Hereford.

We committed to you, brother bishops, and to *our venerable brother*, the Bishop of London, *under a certain form*, for determination the cause which is conducted between *the noblemen* F. and R. *of Arden formerly*, son of Agatha, concerning his birth. (*And below: cf. c.* 17, *On the Office of a Delegated Judge, I.* 29.) Moreover, if his adversary, having been lawfully cited, should scorn to approach your presence or to obey your judgment, or even *if, as is proposed to us, he has absented himself for many days past*, since he is said to have departed from England *and afterward not to have appeared openly in the land nor approached your presence*, you shall nevertheless summon to your presence his proctor, if perhaps he left one. Whether the *proctor* comes or not, or if he left no proctor, all denunciations having been sent to his house, you shall *attentively hear the cause according to the order of law and*, after receiving the witnesses of the other party, shall, *within three months after receipt of these letters*, proceed according to the said form, *the obstacle of appeal being removed*, to the rendering of sentence, *in such a way that you by no means defer the decision of the cause beyond three months, notwithstanding any letters—whether those which make mention of restitution of possession to R. of Arden to be made, or those which make mention of leaving the possessory judgment to the king, or any others—which were obtained before, or if any should happen to be obtained afterward without the tenor of these letters having been set forth. Indeed, if within the aforesaid time you are unable or unwilling to proceed in execution of the things which have been said, we will that our commission ought for this reason to expire.*

Chapter IV

Latin source headnote: If the defendant is contumacious after joinder of issue, then, if the cause is otherwise clear, a definitive sentence is rendered; if it is not clear, the plaintiff is inducted into true possession.

Urban III, to the Priors of Neuflieu and Viger.

As you noted to us *in your letters, etc.* (*And below:*) Because the defendant had contumaciously withdrawn from your presence, you compelled him to furnish security under oath that he would obey the law before you *in all respects*. And when he had presented himself before you on the appointed day, under the pretext of an advocate, whom he did not have, he refused to answer with his customary malice. Finally, at the plaintiff's urging, he answered that he had received for forty years the tithes concerning which there was contention; and afterward, employing various excuses, he broke forth into the utterance of an appeal and, in contempt of his oath, contumaciously withdrew.

Therefore, *by commanding you* we order that, in order to convict his malice, you summon him once to your presence; and, if he comes, *you shall hear what shall be proposed and, appeal ceasing,* impose a fitting end upon the business. But if, *having been summoned*, he scorns to come, *you shall nevertheless* determine the cause by definitive sentence, since issue has been joined in the matter introduced, or at least adjudge possession to the person present, saving only the question of ownership to the person absent. *Concerning that matter, however, etc.* (*Cf. c.* 4, *On Parishes, III.* 29.)

Chapter V

Latin source headnote: One who, after the plaintiff's contention has been established, interposes a peremptory exception which he does not prove immediately but receives delays to prove, if he fails in proving, is immediately, without waiting for the definitive sentence, condemned in expenses and compelled to pay; but if he cannot, he will be punished in his person according to the judgment of the judge. This is what it says. This text is noteworthy according to the reading which pleases Panormitanus.

Innocent III.

Desiring that an end be imposed upon lawsuits, lest the parties be burdened beyond measure with labors and expenses—especially when litigation concerns ecclesiastical benefices *or offices*, which cannot long remain vacant without loss—we establish by the present decree that, after one party has established its contention, if the other should perhaps wish to interpose a lawful exception which it is unwilling or unable to prove immediately, because exceptions of this kind are frequently interposed through calculated malice to impede or defer the proceeding, then, when delays have been accepted, it shall from that time be condemned, if perhaps it fails in proof, to pay the other party the moderate expenses thereafter to be incurred in the judgment. And if it is not solvent, it shall be punished otherwise according to the judgment of a discerning judge, so that, at least terrified by this fear, no one may readily interpose false exceptions to the injury of another.

Chapter VI

Latin source headnote: A person cited for the whole cause, with a certain term assigned for appearing, is bound to appear at the term; and, if an impediment exists at the term, he ought to

appear as soon as he can after the term; otherwise he will be condemned in expenses from the time the citation was issued.

The same, to the Bishop of Palestrina, Legate of the Apostolic See, and the Dean of Brin.

When the beloved sons *Master S. of Liège and H., canon of Laon,* messengers of *the beloved son H., called* Bishop-elect of Liège, had *formerly* approached the Apostolic See on his behalf, *the beloved son* [*L.*], archdeacon, and H., canon of the Church of Liège, *afterward coming to our presence* in their own names and those of certain of their fellow canons—*L., archdeacon, H., cantor, L., provost of Saint Peter, and certain others*—whose letters of ratification *concerning the same business they exhibited to us,* proposed certain crimes against that bishop-elect, through which they endeavored to repel him from election to the *Church of Liège* as unworthy. (*And below:*)

Although, however, no slight suspicion had arisen against him from the fact that the same bishop-elect appealed from the grievance of the adverse party and that, although the appeal had not been *interposed* through sufficient proctors, he could have prosecuted it while they prosecuted, nevertheless, wishing to observe the order of law *in all things, by strictly commanding him* we ordered that by the Sunday then *past* on which "I am the good shepherd" is sung, he should approach our presence either personally or through a sufficient proctor *sufficiently instructed, lest he appear afterward to evade examination through delays or any occasions,* to answer concerning all the aforesaid matters; otherwise, since we assigned the aforesaid term to him as peremptory, he should know that, so far as we could by law, we would thereafter proceed in the aforesaid business.

Therefore, while his adversaries *waited for him at the Apostolic See,* we considered that he should be awaited for a long time, *even* beyond the term; but he *neither came nor sent a sufficient proctor,* but *only* a simple messenger bearing letters of *his* excuse. For he wrote that he had received late *the aforesaid Master S.,* his *messenger,* upon whom, when *he* withdrew from us, we had enjoined orally that he should cite the same man; hence, both on account of the shortness of the term and the dangers of the roads, he could not present himself before us. But it operated against this that, just as he had sent *to us* an excuser, so he could have sent a representative, since it had not been enjoined upon him that he come to the cause only in his own person, but that either he should approach or he should send a suitable proctor.

Furthermore, when someone is commanded to present himself to a judge at a certain term, two things are commanded under this form: that he come to the judge and that he approach on the day appointed to him. Hence, if he cannot come on the assigned day, he is nevertheless bound to present himself to the judge, *as reason suggests and lawful sanction manifests*. For if someone is commanded to pay a certain thing to another on a certain day, he will not for that reason be released from the command if he is unable to pay on the given day; indeed, he is bound to payment even when the day appointed for payment has elapsed.

Wherefore, because the said bishop-elect neither came nor sent a sufficient representative on the day appointed to him, or afterward, although awaited for a rather long time, and because there was no hope of his nearby arrival—inasmuch as he had in some fashion excused his delay by letters and feared the summer heats and ambushes set for him—*by the counsel of our brothers* we held him contumacious and took care to condemn him to the lawful and moderate expenses which his adversaries had incurred *from* the time the citation was issued, when they began to await him,

regarding as frivolous what was meanwhile said by some to have been attempted concerning H., provost of Saint Denis.

Chapter VII

Latin source headnote: A sentence in a beneficial cause does not pass into res judicata with respect to a superior so as to prevent him from being able to inquire into the rights of the parties, especially when sentence was rendered against a person absent, although contumacious and undefended.

The same, to the Archbishops of Armagh and Cashel.

When formerly the cleric D., presenting diverse letters of the prelates of Ireland to Pope Celestine, our predecessor, asserted that he had been elected Bishop of Ross, and no one appeared who proposed anything against him, our said predecessor caused the office of consecration to be conferred upon him *through A., Bishop of Albano of good memory, and sent him back consecrated to his church*. But afterward *the beloved sons* F. and G., monks, approaching the presence of the same predecessor of ours, each asserted that he had been elected by the canons of the Church of Ross, and *the same F. explained* that the aforesaid D. had been consecrated *to the same church at the Apostolic See, which he had circumvented* through false letters.

For this reason our same predecessor committed *their* cause to you, *brothers, the Bishops of Cashel and Laon*, under this form: that you should solicitously inquire into the form and proceeding of the election of the aforesaid D.; and, if it were established that he had been canonically elected, you should cause him to enjoy peaceful possession; otherwise, you should hear the cause between the aforesaid F. and G., and whichever one's election you found to have been canonical and more reasonably made, *reason going before*, you should take care to prefer it to the election of the other; *and you, brother of Cashel, should consecrate as bishop the one whom you reasonably considered should be confirmed*.

But, as we learned from your letters, when the letters of the said commission had been presented to you, you wished first, according to their tenor, to inquire into the election of the aforesaid D. When the said D., although cited by you a third time, was unwilling to present himself before you, you proceeded in the cause; and you learned, both from the testimony of the clergy and people of the Church of Ross and from the assertion of the *illustrious* King of Cork and the prelates of *his* province, that the election of the aforesaid F. had been canonically celebrated, and *afterward* took care to confirm it by apostolic authority, especially since the chapter of the Church of Ross steadfastly asserted that it had not elected the said D., nor had it thought in any way about the election of the aforesaid monk G.

Meanwhile, however, the aforesaid D., approaching the Apostolic See [*and*] *making no mention at all of the aforesaid commission or even of the elections of the aforesaid persons*, [*did not fear to suggest to us that, when he was returning to the diocese of Ross with the aforesaid letters of our predecessor, the aforesaid King of Cork had caused it to be prohibited to him that he enter the diocese or Church of Ross until he paid, or at least promised, a certain sum of money to him. But when his friends afterward, without his knowledge, promised certain gifts to the king, he was admitted to his church and ministered in it for half a year. But when he was unwilling to pay the money promised by his friends, the king, moved to anger, commanded the dean to show him no reverence. Although the dean was bound to the said D. by an oath, nevertheless, because he could not obtain the archdeaconry from him for his still-young son, on the Thursday of Holy Week he presumed to steal the oil which ought to have been blessed; and, although on account of this he had been bound by D. with the bond of excommunication, nevertheless, on the*

Tuesday of the following week he stole the books of the Church of Ross and did not at all hesitate to transfer himself to the king against him. Wearied by the harassment of these two, he was compelled to leave the king's land, on account of which he obtained from us letters to our venerable brother, the Bishop of Ferns, and his co-judges, directing them diligently to induce and admonish the aforesaid king to permit him to return safely to his church without any exaction of money and to exercise the administration of the episcopate in temporal and spiritual matters; otherwise, they were to bind the king with the bond of excommunication and subject his land to interdict, relaxing neither sentence until he fulfilled the apostolic mandate concerning D.'s reception. They were also to compel the aforesaid dean, if the foregoing were established to them, to come to the Apostolic See, suspended from office and benefice, and, until he came to his senses, cause him to be publicly announced as excommunicated.]

Furthermore, he obtained letters concerning certain other grievances and injuries against the said F. and certain others, [*asserting that the same bishop detained the rights of the Church of Ross and that the same monk F. had rashly laid violent hands upon the archdeacon and clerics. Moreover, when the same D. departed from us with letters of this kind, after a space of almost three months*] the said monk F. *approached the Apostolic See and* afterward presented to us letters on your behalf which contained how you had proceeded in the aforesaid commission. *Therefore, after diligent deliberation concerning this had been held with our brothers, fearing lest, just as our predecessor is said to have been circumvented through the letters which the same D. had presented to him, it might also happen that we were circumvented through your letters, presented to us by the same monk,* wishing therefore still to act mercifully with the absent man, so that [*both*] his malice might be [*more strongly*] convicted, we considered that the said *monk* F. should be remitted *jointly* to you, *by more strictly commanding your fraternity through apostolic writings* that, notwithstanding the fact that the election of the same F. had been confirmed, you should lawfully cite the often-mentioned D., if he could be found in Ireland, to the cause and, after the faculty of defense had been granted to him, should proceed canonically in the cause itself, *having God alone before your eyes*.

If, having been found, he should scorn to present himself before you within three months, you shall proceed to the consecration of the said F., every occasion being set aside. But if he is not found in Ireland, after a period of one year has been granted to him from the time when he is understood to have appealed to us—if not by word, nevertheless by deed—by undertaking the journey to come to the Apostolic See, you shall commit the administration of the Church of Ross in spiritual and temporal matters to the said F.; and, when that period has elapsed, you shall not defer to consecrate him as bishop. [*Lest, however, etc. Given at Perugia on the fifteenth day before the Kalends of October.* 1198.]

Chapter VIII

Latin source headnote: If proceedings are conducted by way of inquisition against a person contumaciously absent, witnesses can be received even when issue has not been joined, and a definitive sentence can be rendered, even by way of deposition, if the offense merits this.

The same.

The word emitted by the instrument of the Lord's voice is a word of truth: *that the tree which uselessly occupies the earth is deservedly judged to be cut down and cast into the fire, so that the earth, which is held barren under the harmful occupation of a useless tree, may through a new planting receive suitable cultivation for bearing fruit. Not without reason is H., formerly Bishop of Chur, compared to this tree, for he has until now detained the Church of Chur through violence and,* as *the beloved sons*, the canons of Chur, *V., S., and R., and Be. Ro., pleban of Saint George, reported in our tribunal on your behalf, the aforesaid* H., Bishop of Chur, not only brought

his church low by dilapidating it, as public infamy proclaimed, but polluted it with homicide, incest, and other crimes.

But we, as those upon whom the correction of these matters lies, when your canons themselves, induced by good zeal, as we judge, took care to accuse the aforesaid bishop [and], considering the enormities of the same man, to bring them to our ears—fearing lest, as is contained in the decree of Gelasius, they would incur apostolic offense if they thought that excesses of this kind ought to be suppressed from the hearing of the Catholic Church—first committed the cause concerning these matters to *our venerable brother*, the Bishop of Trent, and *the beloved sons*, the Abbot of Mount Saint Mary and the Provost of Isola; and a second time to *our venerable brother*, the Bishop of Brescia, and again to the same *abbot and provost*, etc. But when the bishop himself had contumaciously scorned to approach the presence of the first judges, *etc.*, he was suspended from office and benefice by those *first* judges under our authority. (*And the rest:*)

Finally, having been called before the judges by canonical citation, he with difficulty presented himself; but then, advancing a frivolous excuse conceived in malice, he neglected to proceed at law with the canons. For this reason, we, by the counsel of our brothers, suspending the bishop himself —or rather, confirming by apostolic authority the suspension made by the judges—committed the cause concerning these matters for a third time to *our venerable brother*, the Bishop of Como, and *the beloved son*, the Abbot of Saint A., to be heard in order to overcome the malice of the bishop himself. They, after the parties had been cited, *having associated with themselves prudent and honorable men*, when he appeared neither personally nor through a suitable representative, rendered a sentence of excommunication against the *bishop* on account of his disobedience, admitting the witnesses on your behalf as they had received in mandate from us—namely, abbots, priors, provosts, and other religious men—through whom it was established that every article of the aforesaid crimes had been proved. (*And below:*)

We therefore, seeing that the judicial order had been observed in this deed, considering furthermore that after the sentences rendered against him he presumed to celebrate, and since many prelates of churches wrote against that bishop and not one wrote in his defense or even to excuse him in any respect, wishing in the name of the Lord with the Apostle to avenge every disobedience, although absent in body yet present in spirit, according to the word of the same Apostle we rendered a sentence of perpetual deposition against him; and, depriving him both of pontifical office and of every priestly office, we considered that he should be condemned without any hope of restitution, nevertheless revoking as void whatever, after the prohibition of the Apostolic See or after the suspension and excommunication had been made, he presumed to alienate from the goods of the church.

Chapter IX

Latin source headnote: A plaintiff who is not admitted into the possession decreed to him by a judge for the purpose of preserving the property, or who is expelled from it, becomes a true possessor through the lapse of a year.

The same, in the General Council.

It sometimes happens that, when possession for the purpose of preserving the property is adjudged to a plaintiff because of the contumacy of the adverse party, because of the defendant's power or fraud the plaintiff cannot obtain the thing to be preserved within a year, or loses it after acquiring it;

and thus, since according to the assertion of many he would not become a true possessor after the lapse of a year, the defendant derives advantage from his own malice. Therefore, lest the contumacious person be in a better condition than the obedient person, according to canonical equity we decree that in the aforesaid case the plaintiff shall, when a year has elapsed, be constituted a true possessor. [*For this, etc.* (*Cf. c.* 8, *On Arbitrators, I.* 43.)]

Chapter X

Latin source headnote: If the defendant is not found, it is sufficient for the citation to be posted publicly at his church.

Gregory IX, to the Archbishop of Bordeaux.

Our venerable brother—(*And below:*) Wishing that an end be imposed upon lawsuits, lest they be immortal, we command that at the beginning of the next approaching Lent—which we have considered should be assigned to you as a peremptory term—you shall present yourself before us, personally or through a suitable proctor sufficiently instructed for joining issue and for transacting all other matters which appear necessary for decision of the business, concerning the right of primacy which the Archbishop of Bourges proposes that he has over you and your province. We nevertheless gave a mandate to the Archdeacon of Transuig and Master M., canon of Tours, that they too should take care by our authority to cite you peremptorily for the same term according to the aforesaid form; and, if you cannot be found, they shall cause the edict of citation to be posted publicly at your church by themselves or others.

Title XV: On One Sent into Possession for the Purpose of Preserving the Property

Chapter I

Latin source headnote: One sent into possession by the first decree in a real action acquires, through the lapse of a year, true and unchangeable possession of that thing, although the person who suffered the sending into possession had within the year the intention of furnishing security but, through his own default, did not put it into effect. This is what it says according to the true understanding.

Alexander III, to the Prior and Brothers of Guisborough.

When *our beloved son* R., your canon, and the representatives of *our beloved son G.*, provost of Beril, were established in our presence, concerning possession of the church of Lamento, into which you had been inducted for the purpose of preserving the property *by our mandate and authority through the delegated judges, namely the Bishop of Exeter and the Prior of Chinelwi*, there was debate on each side before us for some time.

Finally, however, *after the reasons and allegations on each side had been produced*, we gathered from the assertion of each party that, although you had been inducted into possession of the same church only for the purpose of preserving the property, nevertheless within the year the other party did not furnish security *with you concerning the same cause* to submit to the law, although it had the intention of furnishing *that security* and you were prepared to receive it. Hence *it is that, by apostolic authority with the common counsel of our brothers*, we decree that *you* shall henceforth possess the aforesaid church *freely*

and without any contradiction, saving the right which the same provost is known to have in seeking the church; *nor shall the aforesaid provost dare henceforth in any respect to harass you with vexations concerning the same possession*.

But so that the sentence of our determination may be inviolably observed *in future times*, we have considered that it should be strengthened by apostolic protection, *establishing that it shall be lawful for no person whatsoever to infringe this page of our determination. But if anyone should presume to attempt this, let him know that he will incur the indignation of Almighty God and of the Apostles Peter and Paul*.

Chapter II

Latin source headnote: The period of a year does not run against the person who suffered the sending into possession if, within that period, he offered security to the judges, or to one of them while the others were absent, although it was not received by them or by him. And according to this understanding, this is a noteworthy case.

Clement III, to the Bishop and Archdeacon of York.

When, as we have learned, a question was being conducted between *the beloved son* P., subdean *of Bayeux*, and *the beloved daughters in Christ*, the abbess and convent of Holy Trinity *of Caen*, concerning the church of Capit, the abbots of Thaurin and Corinth and the archdeacon of Chima, delegated by the Apostolic See, sent those nuns into possession of the thing sought for the purpose of preserving the property, *which the constitution of the law appears to have decreed against contumacious persons*. Hence, when this came to the knowledge of the subdean, he approached the aforesaid archdeacon and, offering him security for submitting to judgment—because the Abbot of Corinth had departed for England and the Abbot of Thaurin had entered upon the way of all flesh—urgently petitioned that possession be resigned to him *according to the order of law* within the year; but he could not obtain this.

But in the course of time the nuns whom we have mentioned obtained other letters to our venerable brother W., Archbishop of Rouen, and the beloved sons, the Abbot of Saint Catherine and I. of Vieux-Pont, Archdeacon of Rouen. The subdean, as they assert, refuses to undergo their judgment for this reason: that he holds the aforesaid archbishop suspect for a certain reason and fears that the co-judges may readily be drawn by his authority to either party. But because no one is compelled against his will to be subjected to the judgment of suspect judges, through apostolic writings we command your discretion that, *if the subdean shows a certain ground of suspicion against the archbishop, you shall hear the business and determine it, appeal being removed, by the mediation of justice; yet first*, if it is so, after security for submitting to judgment has been received from him, you shall cause possession to be restored to him. Nor do we will that it stand in the way that the year is alleged to have elapsed, if it did not stand through him that he did not receive possession and furnish security within the year. *But if you learn that anything was wrongfully changed against him concerning this through the aforesaid letters after he refused the suspect judges, you shall reduce it to the due state, proceeding in all these matters without the obstacle of appeal*.

Chapter III

Latin source headnote: If the person who suffered the sending into possession, in seeking possession again, alleges that he was not contumacious, he is restored to his former state after security has been furnished, and condemnation in expenses is deferred; he avoids that condemnation if it is afterward established that he was not contumacious.

Innocent III, to the Bishops of Urbino and Senigallia.

When *the beloved sons*, the Abbot of Saint Angelo *on behalf of his monastery*, and *the nobleman* P. Gal., *a knight, on behalf of himself, his father, and his wife*, came to the Apostolic See, the same P. proposed *before us* that, *when* the aforesaid abbot had drawn him into a cause concerning a certain possession before *our beloved son* John, *cardinal priest of the title of Saint Prisca, then* legate of the Apostolic See *in the March*, he asserted before the same cardinal *that he would answer him according to the good custom of the land*. But the legate himself committed *their* cause to judges for determination according to the law and the good custom *of that land*. When they wished to proceed *in the cause* according only to the law *and not according to a custom of this kind*, the aforesaid P. appealed *from them, as persons who wished to exceed the form of the mandate, to* our hearing. Nevertheless, the judges decreed that the adverse party should be inducted into possession of the things sought for the purpose of custody, in such a way that, if *the knight himself* furnished security for submitting to judgment within a year and a day and restored thirty pounds to the other party for expenses, he would receive *that* possession.

And when *our beloved son* G., *cardinal priest of the title of Saint Mary across the Tiber*, legate of the Apostolic See, afterward entered that land within the year, the knight offered before him security to submit to the law and petitioned that possession be restored to him. *But the same legate cited the aforesaid abbot to the cause, to whom afterward* the *same knight was* prepared to restore the expenses incurred in the suit, which, as he asserts, did not exceed the sum of six pounds; but the abbot petitioned that the amount of thirty pounds be restored to him. (*And below:*)

We therefore, *when the often-mentioned knight sought that possession be restored to him, while the abbot petitioned that he be constituted a true possessor by the second decree, understanding that the abbot himself had confessed in law that the often-mentioned knight had applied to that cardinal within the lawful time—indeed, had even offered before the same cardinal, within the year, security to submit to the law—and that the cardinal had sent his letters to him within the year, although he was cited for a later term*, believe that P. himself should, after security has been furnished, be reduced into possession. We also decree that, if it is established that *that* custom which *the knight* alleges is praiseworthy, because it follows from this that he reasonably appealed, he shall by no means be compelled to restore the expenses. Otherwise, *if you find that custom to be reprobated*, since it appears from this that he appealed for the purpose of frustration, he shall be compelled to restitution of those expenses which it is established that the abbot necessarily incurred in the suit because of this.

Chapter IV

Latin source headnote: Against an absent person who did not leave a proctor, citation having been made at his home and no one defending, a sending into possession is made. This is what it says, by supplying chiefly to the letter, as is said in the gloss. And this is the true and noteworthy understanding.

Gregory IX.

If your adversary, transferring himself to distant places after the edict of citation, did not leave a lawful proctor, and, denunciation having been publicly made at his home, no one appears to defend him, you can by law petition that you be inducted, for the purpose of custody, into possession of those lands concerning which the question is conducted.

Title XVI: That Nothing Be Altered While Litigation Is Pending

Chapter I

Latin source headnote: Even a privilege obtained from a prince, through which someone is deprived of the use of possession while litigation is pending without cognizance of the cause, is invalid as surreptitiously obtained, or is to be revoked as contrary to reason.

Alexander III, to the Archbishop of York.

It has not fallen from our memory *how, in the first year of our advancement, you caused to be presented to us a transcript of the letters of Pope Honorius, our predecessor of happy memory, in which it was contained that it had been granted by apostolic kindness to your predecessors that both they and their successors should be free to have the cross borne before them throughout all England. We, however, adhering to the footsteps of our predecessor, confirmed to you under the protection of our writing what had been kindly granted to your predecessors by our predecessor. But afterward T., formerly Archbishop of Canterbury of holy and venerable memory, judging that this redounded to the depression of his right and dignity, began to move a question concerning it. And for this reason he appealed to the Apostolic See, affirming, if we remember correctly, that this had by no means been lawful for you and your predecessors. And thus it happened that through our writings we prohibited you from daring for any reason to have the cross borne before you in the province of the Church of Canterbury until cognizance had been taken of the cause itself. Therefore, because through our beloved sons I. and A., your clerics, you laid a grave complaint before us, asserting that we had despoiled you, before cognizance in judgment, of possession of this thing which you and your predecessors had held, we, wishing to defer to you as our venerable brother and to preserve your rights unimpaired [and] inviolate, by the present letters* establish that our letters of prohibition, which we directed to your fraternity at the petition of the Archbishop of Canterbury, shall create no prejudice against you whereby you and your successors are not free—as has been granted to you by the benefit of the privileges of the Apostolic See and as you and your predecessors have been accustomed *to do this*—to have the cross borne before you throughout all England, until it is decreed by definitive sentence whether your church ought by right to have this.

Chapter II

Latin source headnote: One accused of adultery for the purpose of separation from the marriage bed ought not, while litigation is pending, to be deprived of marital possession.

Clement III.

A praiseworthy—(*And below:* [*Cf. Comp. II, c.* 3, *On Cognizance of Spiritual Matters, IV.* 6.]) You ask *again*, when it happens that a marriage is accused, whether carnal intercourse is immediately to be suspended, *or how long it can be dissembled or rather sustained*. To this we answer briefly that, *since Alexander II expressly prohibits persons from being separated from one another until a just examination of the cause is made, and the institution of Pope Symmachus contains that any prelate who is accused ought not to be abandoned by his subjects before the things alleged shine forth in the light, in the present matter* either one of the spouses who is accused cannot, before the accusation is proved, be deprived of the right which that person has in the other. [*Furthermore, etc.* (*Cf. c.* 4, *Who Can Accuse a Marriage, IV.* 18.)]

Chapter III

Latin source headnote: One who has alienated a litigated thing in such a way that it cannot be recovered ought to substitute in its place an equivalent which he will not be able to alienate. This is what it says, together with the following chapter.

Innocent III, to the Abbot and Convent of Saint Sylvester.

The Church of Saint Mary in Via Lata moved a question before the judge L., *in the time of B., called Carosomo, senator*, against John of Ateia, who was said to detain certain of its possessions contrary to justice. (*And below:* [*Cf. c.* 10, *On Constitutions, I.* 2.]) We prohibit you from presuming meanwhile to alienate the possessions which succeeded into the place and right of those which the Church of Saint Mary had sought from John of Ateia and which were transferred by the same John into your monastery while litigation was pending, so that, if the Church of Saint Mary should *perhaps* wish to proceed either concerning the vice of the litigated contract or concerning ownership, it may, if it prevails in judgment, have something which it can evict and possess, lest it labor in vain when your monastery no longer possesses it. [*Given at the Lateran on the fifth day before the Kalends of December.* 1199.]

Chapter IV

Latin source headnote: It says the same thing as the preceding chapter.

The same.

The Church of Saint Mary—(*And below:* [*Cf. c.* 10, *On Constitutions, I.* 2.]) petitioned that the possession of which the aforesaid church had been despoiled, the order of law having been omitted, be restored to it. (*And below:*) We decree as void and empty whatever was done by others after our predecessor recalled the same business to his curia. (*And below:*) But because, after restitution had been made to you by John of Ateia, you assigned the aforesaid possession to another by title of lease and could not restore it to the despoiled church, we caused an equal quantity of equivalent possessions to be assigned in its place to that church according to the judgment of good men. Because those possessions had been pledged to another, we caused them to be released by you from the creditors, who *afterward* resigned to us the instrument of pledge. [*And because, etc.* (*Cf. c.* 10, *On Constitutions, I.* 2.) *Given at the Lateran on the fifth day before the Kalends of December.* 1199.]

Chapter V

Latin source headnote: A suit is to be decided according to the laws existing at the time of the controversy, not according to a privilege obtained while litigation is pending, unless it makes mention of the pendency of the suit.

Honorius III, to the Chancellor, Cantor, and A., Canon of Paris.

The beloved son Master A., parson of the church of Basseville, explained before us that, when a question had arisen between his predecessor on the one side and the prior and monks of Basseville *in the diocese of Chartres* on the other, concerning the tithes of newly cultivated lands situated within the bounds of his parish, while it was pending before judges delegated *by the Apostolic See*, the abbot and convent *of Saint Martin* of Marmoutier at Tours, to whom the aforesaid prior and monks are subject, obtained from the Apostolic See for themselves and their members an indulgence concerning the

receipt of tithes of this kind. Under pretext of it the said prior and monks strive to claim the aforesaid tithes for themselves, although no mention of the *above-mentioned* question had been made in *that* indulgence. Therefore, we command *your discretion* that *by our authority* you enjoin upon the same judges *to whom that question was committed* that, notwithstanding the aforesaid indulgence, they proceed in the business according to the form handed down to them.

Title XVII: On the Sequestration of Possessions and Fruits

Chapter I

Latin source headnote: A thing into possession of which a sending has been made ought not to be sequestered, even if the person sent into it was violently ejected from it. Or, more notably, thus: A sequestration made in place of a sending into possession for the avoidance of scandal ought to be revoked after security has been offered and expenses restored.

Innocent III, to the Archbishop of Milan.

For this God anointed us [*with the oil of gladness above our fellows, that we should love justice and hate iniquity. We fulfill this laudably when, walking on the royal road, we turn aside neither to the right nor deviate at all to the left, but, justly pursuing what is just, we neither regard the person of the poor nor honor the face of the powerful, because there is no acceptance of persons before the Lord; when we also discuss merits by subtle examination and consider the quality of petitions, so that we render to everyone his right and reasonably repel petitions which do not accord with reason.*]

For the Abbot of Regula, coming to the Apostolic See, explained to us [*and our brothers*] that, when M., [*formerly Archbishop of Milan*], your predecessor, concerning the cause which had been conducted *for a rather long time* between him and his monastery, *after many commissions finally* obtained letters directed to [*our venerable brother*] the Bishop of Verona, [*a cardinal of the Roman Church*], and he, [*the delegated judge, after the parties had been established in his presence*], rendered sentence in the possessory judgment partly for the monastery and partly for the archbishop, when the proctor of that monastery afterward wished to institute a question concerning ownership, [*the archbishop's party rather often sought delays and adjournments. And when the same archbishop had very often informed the aforesaid Bishop of Verona by letters that he by no means declined his judgment, and each party was at Novara before the messenger of the bishop himself, who had been sent for this purpose,*] the archbishop objected that the bishop's jurisdiction had expired, asserting that only the cause of possession and not that of ownership had been committed, and that, because he had pronounced concerning possession, having once discharged his office, he could not thereafter take cognizance of the question of ownership. [*And after alleging these matters, the aforesaid archbishop appealed.*]

To these things the monastery's party proposed to the contrary that the cause conducted between the archbishop and the monastery had been committed to the aforesaid bishop absolutely and without distinction, and it therefore said that the scope of the cause ought not to be divided. [*It also added that, since the archbishop had so often sought from the judge a delay and a place in which he ought to answer before him concerning that question of ownership, he could not afterward refuse him or appeal in any respect; especially because, while the adverse party was absent, as stated above, he himself had petitioned for the same judge and had caused the remedy of appeal to be prohibited in the apostolic rescript.*]

But the judge, [*having employed the counsel of prudent men*], decreed that, on account of the archbishop's contumacy, the plaintiff should be sent into the possession which had been adjudged by *the bishop himself to that* archbishop, from which, nevertheless, the archbishop violently ejected the monastery. *And when* [*the beloved son G., then prior but now abbot of that monastery, and G., messenger of the adverse party*], *approached the Apostolic See for this reason, Pope* Celestine, our predecessor *of good memory, after all the matters stated above had been more fully understood through* [*our beloved sons Hugh, cardinal priest of the title*] *of Saint Martin, and the cardinal deacon of Saint Mary in Aquiro, whom he had granted to them as auditors, through* [*Al. of good memory,*] *then Bishop of Albano,* interpreted his rescript in this manner: that both the cause of possession and that of ownership had been delegated to the judge, since it had been committed absolutely and without distinction and its scope ought not to be divided, [*and that for the aforesaid reasons the same judge could not have been refused by the archbishop even through the obstacle of appeal.*]

Therefore, the same predecessor of ours, wishing to defer to the archbishop and abbot without injury to justice, also ordered the aforesaid possession to be sequestered *with our venerable brother the Bishop of Vercelli and the Bishop of Novara of good memory* according to his judgment. He enjoined upon [*our venerable brother*] the Bishop of Reggio and the [*then, of happy memory,*] Bishop of Modena that, [*having summoned the parties to their presence and notwithstanding any contradiction or appeal concerning either the principal or the incidental matter*], after taking fuller cognizance *within two months* of the cause of possession and ownership, they should decide it with a due end and afterward resign possession to the party which prevailed triumphantly concerning ownership.

[*And when the same letters reached the said Bishops of Modena and Reggio and the parties had been established in their presence, the archbishop's proctor offered security to purge the contumacy, if any had preceded. The monastery's proctor was unwilling to receive it unless sequestration of the possession first occurred and the right which belonged to him from a commission of this kind was preserved, so that the archbishop should seek from him in judgment as from the possessor. When, on the other hand, the archbishop's proctor answered that it ought to be sought from him as from the possessor, the debate was prolonged, and the term within which the aforesaid bishops ought to have taken cognizance concerning ownership expired. Moreover, a messenger of the monastery, again approaching the Roman Church, asserted that it had stood through the archbishop that neither had possession been sequestered nor had proceedings concerning ownership been conducted in the cause. For this reason our said predecessor commanded our venerable brother, the Bishop of Bobbio, through apostolic writings that, after possession, together with the fruits received from it, had been restored to the monastery, they should afterward hear whatever question the parties had against one another.

When he commanded through his messenger that, according to the tenor of the apostolic mandate, the abbot be inducted into the possession which the Bishop of Verona had adjudged, Hugh of Camerario violently ejected the abbot from it. With his accomplices he drove away by armed force both the bishop's messenger and the abbot and monks; burned with fire the boat by whose conveyance they had approached there; plundered the cells of the monastery; beat several lay brothers; and did not blush to burn houses situated outside the enclosure of the cloister, together with certain animals and a certain man. After this reached the hearing of the same predecessor of ours through the report of the abbot's messenger, by strictly commanding our venerable brother, the Bishop of Ferrara, he ordered that, having summoned the parties and after possession, together with

the fruits received from it from the time of the sentence rendered by the said Bishop of Verona, had been restored to the monastery, he should take cognizance concerning ownership and, preserving it unharmed in the possession adjudged to it, should decree what was just and cause it to be firmly observed by apostolic authority, the obstacle of appeal being removed. He was also to restrain by sentence of excommunication, appeal being removed, those who opposed apostolic mandates or troubled the monastery concerning the other possession; and he was to announce the said Hugh and his accomplices as excommunicated and cause them to be avoided by all until they made competent satisfaction to the monastery for all things taken and injuries inflicted and presented themselves before the apostolic countenance with his letters, unless you, brother archbishop, exercised against them this coercion as had been commanded to you.

But the said Bishop of Ferrara, having received letters of the Apostolic See concerning this, as we learned from his letters, after admonition had been made, promulgated a sentence of excommunication against Hugh of Camerario and his accomplices when you were unwilling to excommunicate him within the appointed term; and when, although lawfully cited by him, you neither approached nor sent a sufficient representative, but excused your absence by words and letters, he pronounced, saving the question of ownership, that possession was to be restored to the monastery. And when he caused the abbot to be inducted into it through his messenger, that abbot was cast out from it through the violence of armed men, at the command of you, brother archbishop, Hugh of Camerario, and the beloved sons, the consuls of Milan.

For this reason the same abbot petitioned us that we ought to confirm by apostolic authority the sentence of restitution so often rendered for him and, after possession had been restored to him together with the fruits, should cause him to enjoy it without molestation. But the beloved son Passaguerra, your proctor, and his associates said that the abbot's petition was not to be admitted, especially for this reason: that the abbot himself, in the letters which he obtained from the Apostolic See to the Bishops of Bobbio and Ferrara, had suppressed the truth and expressed falsehood. For he had suggested that the Bishop of Verona had promulgated sentence concerning possession, saving the question of ownership, although he had only decreed that the abbot be inducted into possession for the purpose of preserving the property. He also concealed the truth when he made no mention before the Apostolic See of the giving of security offered by the archbishop before the said Bishops of Reggio and Modena.*]

We therefore, [*after mature counsel had been held concerning these and all other matters proposed on this side and that with our brothers, the archbishops and bishops established at the Apostolic See, understanding that the said Bishop of Verona had decreed that the abbot be inducted into possession only for the purpose of preserving the property, as was consonant with reason, since issue concerning ownership had not been joined before him; and that it had not stood through the same M., the former archbishop, that he did not furnish the security offered within the year and purge the contumacy, if any had preceded; also considering that the abbot himself had obtained the letters to the Bishops of Bobbio and Ferrara through suppression of the truth and expression of falsehood—not rendering sentence, because issue had not been joined before us, but responding to the abbot, we answered that his petition according to the aforesaid form was not to be admitted, and commanded that he lack the writings which he had obtained through falsehood;*] reduce the scope of the cause to the state in which it had been when our aforesaid predecessor committed the cause of ownership and possession to the Bishops of Reggio and Modena, the mandate of sequestration being entirely revoked. [*We will and command, nevertheless, that*

the sentence of excommunication rendered against Hugh of Camerario and his accomplices be inviolably observed until fitting satisfaction.]

But lest we appear to fail the monastery in its right, we decree that there are to be restored to it the moderate expenses incurred for this from the time when the Bishop of Verona decreed that it be inducted into possession until the time of the satisfaction offered, and that sufficient security to submit to judgment is to be furnished by you. [*The sentence, however, etc. Given at the Lateran on the sixth day before the Nones of March.* 1198.]

Chapter II

Latin source headnote: If one sent into possession for the purpose of custody dissipates the fruits, those dissipated are recalled and sequestered with the others.

Honorius III, to the Prior of Deben and the Dean of Calin.

The beloved son R., rector of the church of Bethusia, showed us by his petition that, when a question was being conducted concerning the same church before the Abbot of Sibiton and his colleagues *by apostolic delegation*, between him on the one side and the abbot and convent of Cisteria *in the diocese of London* on the other, those judges, *inasmuch as they were more favorable than was due to the other party, after an appeal had been lawfully interposed by the same R.*, inducted the aforesaid abbot and convent into possession of the church itself for the purpose of custody. They dispose according to the choice of their own will of the fruits of *that church* received in the meantime, *to his prejudice and injury*. Wherefore, we command *your discretion* that, if it is so, causing the aforesaid fruits to be sequestered *until decision of the business*, you shall recall to its former state whatever you find *meanwhile* to have been disposed of by them from those fruits, *restraining contradictions by ecclesiastical censures*.

Chapter III

Latin source headnote: If a defendant in possession appeals from a sentence rendered against him, the fruits of the thing sought are lawfully sequestered if they are dissipated by him.

Gregory IX.

The fruits of the possession can reasonably be sequestered while litigation is pending from one who has appealed from a sentence, if they are dissipated by him.

Title XVIII: On Confessions

Chapter I

Latin source headnote: From the statement alone of one confessing his own crime, no penalty is to be inflicted upon another; nevertheless, purgation is to be enjoined upon one defamed.

Clement III.

When the monastery—(*And below:* [*Cf. c.* 13, *On Election, I.* 6.]) *But concerning what you took care to attach to your letters—what you should do concerning a certain priest of the same monastery who, at the instigation of the devil, killed one of the brothers, as you publicly proposed that he confessed—we write back to your fraternity and command through apostolic writings that you shall not defer solemnly to degrade him from every divine office and to confine him in some monastery of the Cistercian order, in which, performing the penance imposed upon him for so*

great a crime, he may worthily lament there for as long as he lives what he committed. But those at *whose* suggestion the priest declares that he perpetrated the crime of homicide, unless it is established to *you* by other means *and just reasons* to be true, we judge are to be subjected to no penalty, since according to the statutes of both laws persons who have confessed concerning themselves ought not to be questioned concerning the consciences of others; and, except for the crime of injured majesty, the perilous confession of one confessing concerning his own guilt is not to be admitted against anyone. If, however, you learn that they labor under infamy of this kind, you shall enjoin purgation upon each of them with three associates of his order joined to him.

Chapter II

Latin source headnote: If a crime touching the principal cause is established against someone through his confession, he is punished with the ordinary penalty even if proceedings are not directed against him directly. This is what it says according to the gloss. And it is a noteworthy case and true in itself. Or summarize it thus according to another no less noteworthy understanding, which the gloss also holds although it does not explain it perfectly: If anyone incidentally confesses a crime in judgment, the ordinary judge, by beginning a new proceeding, can punish him with the ordinary penalty. This is what it says exceptionally. Abbas.

Innocent III, to the Canons of Bethlehem.

When a question was being conducted concerning the election of the Church of Bethlehem between R., *your subdeacon*, and P., *canon of the Lord's Sepulchre, recently in our presence*—(*And below:* [*Cf. c.* 4, *On the Cause of Possession, II.* 12.]) *Moreover*, because V., canon of Bethlehem, confessed in law that, in return for furnishing his consent to the election of another, he had received an *obligation and promise* of five hundred Saracens and had acted as an intermediary of simoniacal depravity, we, *understanding that a contract of this kind contained simoniacal depravity*, because we wish to prosecute a vice of this kind as we ought, considered that he should, by definitive sentence, be deposed *from every clerical order* and from every ecclesiastical benefice and office.

Chapter III

Latin source headnote: A confession made in law by a church's steward harms the church itself; it can nevertheless be revoked if, before the business is ended, it is shown to have issued from an error of fact. This is what it says.

Gregory IX, to B., Judge of Viterbo.

It was proposed [*before us*] on behalf of [*the beloved sons*], the abbot and convent of the monastery of Saint M. [*on the mountain of Viterbo, of the Cistercian order*], that, when a question was being conducted before you between them on the one side and V., [*a citizen of Viterbo*], in the name of his wife, on the other, [*the parties finally submitted it to you as arbitrator under an agreed penalty. And when the suit proceeded before you by its own impetus*], the steward of the aforesaid monastery, [*who was prosecuting the same cause*], confessed certain things in law through an error of fact, from which he fears that prejudice may be generated against it. [*Wherefore they petitioned us that fitting provision be made for it concerning this.*] Therefore, since an error of fact harms no one while the business is not yet ended, we command that, if [*the aforesaid abbot and convent*] can demonstrate an error of this kind, you shall provide [*concerning*

this by our authority] that no prejudice is generated against it concerning this. [*Given at Rieti on the twelfth day before the Kalends of February, in the fifth year [of our pontificate]*. 1232.]

Title XIX: On Proofs

Chapter I

Latin source headnote: A defendant is not bound to produce his own instruments for his plaintiff. It is commonly summarized thus.

Gregory, to King Tancred of Winchester.

From the words of the letter—(*And below:*) Your Excellency petitioned that I write to the [*most pious*] emperor that he should seek in the archive the agreements which were formerly issued between the Emperor Justinian *of pious memory* and your predecessors, so that from them he might gather what he ought to observe toward you. But this strongly prevented *me* from doing this: that no one is to be told, "You ought to seek among your own things the documents which are against you and bring them forward into the midst." [*From this matter, etc.*]

Chapter II

Latin source headnote: A plaintiff who has proved fully ought not to be compelled to swear.

Alexander III.

Just as no praiseworthy custom *ought to be torn down by any novelty, so that which is known to have been introduced by usage contrary to law ought, when contrary reason meets it, to be dissolved*. Indeed, because we have learned that it is customary among you that, when someone has established his contention by instruments or *introduced* witnesses, an oath is nevertheless tendered to him, and, if he is unwilling to undertake it, faith is not given to the proofs *produced—which, since it is supported by no reason but manifestly opposes the laws*—we reprove such a custom, since only then is recourse to be had to aid of this kind when other lawful proofs are known to be lacking, *and we decree that it shall henceforth possess no validity*.

Chapter III

Latin source headnote: In a common judgment both plaintiff and defendant prove; and if they prove equally, the defendant is absolved, unless the plaintiff supports a favored cause.

Lucius III, to the Bishop of Chichester.

We have understood from your letters that you and the archdeacon have adjoining prebends in the villages which you each possess individually, and that a controversy is conducted between you under pretext of their boundaries because you say that he has passed beyond the ancient bounds and occupied part of your land, while he asserts to the contrary that he has possessed the same part of the land undisturbed for the space of forty years. But you affirm that you have possessed it peacefully for the same time, and therefore you asked whether proof lies upon the claimant or the possessor.

To this you ought to know that a judgment for regulating boundaries is of such a kind that in it each person holds the places of two persons, namely of plaintiff and defendant. Hence witnesses can be *duly* produced on each side to instruct the judge's cognizance; when they have been examined, the

judge shall admit for creating faith for himself those whom he understands to excel. But if *perhaps* the witnesses of both parties are equally suitable, the possessor's witnesses shall be preferred, since the laws are more ready to absolve than to condemn, except in a cause concerning liberty, in which, if the witnesses of each party *perhaps* are equal, sentence shall *nevertheless always* be rendered in favor of liberty. For it is manifest law that proof is sometimes given to the possessor, since it is *thus* provided by law that one who has objected a prescription of the longest time—which no one rightly objects unless he possesses—and has proved it ought to prevail in the cause.

Chapter IV

Latin source headnote: Credence is not given to a husband asserting, even with an oath, that he has known his wife carnally if the wife proves the contrary through matrons attesting by inspection of her body.

Gregory VIII, to the Provost of Saint Cataldus.

You proposed *to us, beloved son provost*, that the matrimonial cause conducted between *our beloved son* O. of Casanova and the woman S., *daughter of O. of Pisco*, was delegated to you by apostolic mandate. And when the parties were established in your presence, the woman proposed that she had neither been known carnally by the man nor could have been known, which she proved both by her own oath and by the testimony of seven women, who affirm by inspection of her body that she is a virgin; while the man, *however*, asserted the contrary through his oath, *you were by no means willing to proceed in the business until you had our counsel concerning this*. It therefore appears to us that faith is rather to be given to the oath of the girl and the testimony of those seven women, *who affirm from experience that she is a virgin*.

Chapter V

Latin source headnote: Individual members of a corporate body can, for the advantage of the corporate body, disprove an instrument falsely drawn up in the name of the corporate body.

Clement III.

In the third place, *indeed*, we were asked as follows: Behold, a certain regular, using the seal of the chapter, sealed a certain instrument for a friend of his, in which is contained an alienation to him of certain immovable things of the church. When this was produced in judgment, the proctor of the corporate body asserted that it had not been drawn up with the assent of the convent and that the seal was adulterated or stolen. And when, *wishing to reveal the falsehood civilly*, he produced the *regular* brothers to give testimony, they said under oath that, *at the time at which the adversary alleged that the same instrument had been conferred upon him*, whenever there was any mention of this among the brothers, the counsel of the whole convent and its voice were unanimous that they did not wish the alienation of those things, but wished the things of *their* house to remain whole *and* be preserved. But because the adverse party proved nothing against this, we answer that judgment is to be made solely according to the assertion of the witnesses.

Chapter VI

Latin source headnote: Where proceedings concern contracting a marriage, after an impediment has been proved and the attestations published, other witnesses concerning the absence of the

impediment are not to be admitted.

The same.

A certain man swore, as you assert, that he would take a certain woman as his lawful wife. When he wished to convey her [to his house], certain persons, after furnishing oaths according to custom, lawfully proved that they were related to each other in the fifth degree of consanguinity. But because you asked us what is to be done when another person wishes to prove, against the aforesaid proof made by canonical oaths and published to the parties, that no degree of consanguinity touches them, we answer *your fraternity in the present matter* that the former proof is to be upheld. *Nor is heed to be paid to the testimony of only one person. Nor does the fact that the groom and bride propose with steadfast assertion that they have known one another carnally persuade that the marriage should remain, since carnal intercourse between persons who are not lawful cannot by law make a marriage.*

Chapter VII

Latin source headnote: If it is proved by letters of the ordinary that someone is excommunicated, he will be repelled from acting as proctor. This is what it says; and this summary agrees with the text and title, admits no objection, and therefore hold it.

Innocent III, to the Archdeacon of Paris.

After the resignation [*of the beloved son, formerly Abbot of Saint Martin of Troyes, when the votes of the canons of that church were divided in the election, some of them elected the beloved son Manasses, canon of the Church of Saint Lupus, while others transferred their votes to the beloved son P., chaplain of our venerable brother [...], Archbishop of Sens. For this reason we committed the cause for determination to our venerable brother [...], Bishop of Chalon, and the beloved son [...], Abbot of Cluny, under this form: that, inquiring into the rights of each election and the merits of those elected, they should confirm by apostolic authority the election which they found canonically celebrated concerning a suitable person. But if they found neither canonical, after both elections had been quashed they should cause provision to be made for that church concerning a suitable person.

They, summoning the parties to their presence and solemnly taking cognizance of the cause, received very many witnesses both concerning the deed of the electors and against the persons; and, when they had proceeded as far as publication of the witnesses, [...], the proctor of the said chaplain P., appealed to the Apostolic See. But the judges, because one of them—namely, the Abbot of Cluny—was occupied with greater affairs and could not attend cognizance of the cause, deferred to an appeal of this kind on the counsel of prudent men, enjoining upon the parties that they should hasten to our presence with the attestations received, to receive from us a definitive sentence concerning the cause itself.

Therefore, when the acts of the judgment had been received by each party, certain of the aforesaid canons constituted V., their fellow canon, as proctor in the presence of the aforesaid bishop, as we perceived was contained in that bishop's letters. But while the same V. was on the journey to come to the Apostolic See, when in the meantime the said Archbishop of Sens was traveling through the diocese of Nevers for the purpose of visitation, the messengers of the aforesaid church approached him, intimating to him that all the canons, except a few who, although they did not contradict, nevertheless did not expressly consent, had conferred their votes upon P., his chaplain; and they

entreated the archbishop himself to hasten to the place as quickly as possible to provide for the church. When he approached it because of their urgency, all who had formerly refused to express their consent, except Vitalis alone, who was absent, returned to agreement with the others and voluntarily consented to the aforesaid chaplain, seeking pardon for their former dissent. And thus it happened that, at the petition of all, on the feast of the Apostles Peter and Paul, in the greater Church of Troyes, the same P. received the office of benediction from the aforesaid metropolitan; and afterward, solemnly introduced into the Church of Saint Martin with the exultation of all and general joy, and installed as is customary by the beloved son [...], Dean of Troyes, he publicly received in the chapter of the same church the professions of each.

But the said Vitalis, coming to our presence, presented to us the acts of the judges, solicitously petitioning that we deign to dispatch him as quickly as possible. While he waited for some time, the proctor of the said chaplain P. arrived in the meantime. When they were established in our presence, the said proctor humbly petitioned that we deign to approve what had been done concerning the said chaplain by the archbishop and that we should not hear the often-mentioned V. at all, since he was excommunicated. For he asserted that the same V. had beaten L., formerly Abbot of Saint Martin, to the shedding of blood; had also scourged John, a priest of that church, with such grave blows that all his companions despaired of his life; and had afflicted with such hard blows a certain priest of that church who had recently returned from the Apostolic See that his battered face appeared exceedingly frightful. For these excesses and others—concerning which, although cited and admonished by the said metropolitan, he was unwilling either to make satisfaction or even to appear—he was bound by the bond of excommunication. To prove this, the same proctor produced letters both of the said Archbishop of Sens and of the Dean of Troyes.

To these things it was answered to the contrary on behalf of the said Vitalis that he ought not to be impeded in any respect by the objection of an excommunication of this kind. For the canons themselves, not avoiding him up to that time, had by no means declined communion with him either in offices or in judgment; indeed, rather, when he was constituted proctor in the presence of the said Bishop of Chalon, they admitted him without any contradiction. Nor had the archbishop announced to the judges or his fellow brothers that he was subject to excommunication. Therefore, he proposed that he ought to be admitted in judgment like any other, notwithstanding an exception of this kind.

Against this the proctor of the other party replied that, if at any time the same V. attended divine services with his canons, this displeased them altogether; but he, although prohibited, thrust himself into divine offices while they grieved, as is manifestly gathered from the letters of the aforesaid dean. Nor did they communicate with him in judgment, because, although he was of the number of those who opposed the election of the aforesaid chaplain, faith was nevertheless not made in the judgment that the same V. was a proctor or witness in that judgment, or that the often-mentioned canons otherwise communicated with him. He also added that the fact that the same V. was not excluded as an excommunicated person when he was constituted proctor before the aforesaid bishop could not generate prejudice, because this was done in their absence. He further added that, if the archbishop did not announce in that judgment that he was subject to excommunication, this was because he did not know that he was litigating in that judgment; nevertheless, after he had announced him excommunicated by letters fortified with his seal, he was to be avoided by all as excommunicated.*]

Therefore, *when debate concerning this had been conducted before us, because* it was established to us by the letters of the ordinary judge—which are to be upheld until the contrary is proved—that V. was excommunicated *at the time* when he assumed the office of proctor, we considered that he was not to be admitted as proctor. [*But, etc. Given at the Lateran on the fourth day before the Nones of October, in the ninth year [of our pontificate]*. 1206.]

Chapter VIII

Latin source headnote: If one who was requested to restore the whole inheritance in the event that he died without children enters a monastery, the fideicommissum vanishes and the inheritance is applied to the monastery; nor, to invalidate his entrance, is it sufficient to prove minority of age at the time of entrance if a twofold entrance is proved on the other side. This is what it says, with the understanding that the substitution was fideicommissary. But if it was direct, summarize it thus: A substitution made for a son in the event that he dies without children vanishes through his entrance into a monastery. And then add what is in the first summary at the words "nor, to invalidate," etc., to the end; and each understanding is true in itself. I say, nevertheless, that the first is truer, because here there was a fideicommissary substitution, although Lord Antonius says here that it was compendious.

The same, to the Abbot and Convent of Casamari.

In the presence of *our beloved son* G., cardinal deacon of Saint Adrian, G., *a subdeacon*, and B., *a woman, his sister*, siblings *of Veroli*, caused it to be proposed before him, when they were established with your syndic, that, when the late A., their brother, made his testament, he instituted M., his son, as his heir and directed that, if he *perhaps* died without children, his goods should devolve upon *G. and B.* Hence they petitioned that the things which your monastery detained from his goods be restored to them, and sought that you be restrained from troubling them concerning this.

But the syndic proposed to the contrary that the aforesaid M. had offered himself and his property to your monastery, wherefore everything which he had possessed had devolved upon the monastery. He therefore petitioned that everything which they had invaded from his goods be restored to your monastery and that silence concerning the remainder be imposed upon them. To these things, however, the other party replied that the said M. was a minor in years at the time of his offering, *as it lawfully proved through witnesses*, and that, repenting of the vow made, he revoked after recovery *that* which he had done in the fervor of illness. *Hence, both because Milo offered himself and his property to the monastery of Casamari below lawful age and because he afterward revoked what he had done without deliberation, his offering was not valid.* Therefore, since he died without children, under the testament of *his* father his inheritance had devolved upon them.

But *to these things* the syndic took care to answer that, although the said M. had departed from *that* monastery *with your permission, son abbot*, afterward, *approaching your presence with his grandfather, who was his proctor, when you had gone to Veroli*, he humbly and devoutly offered himself and his property to it, and confirmed by oath *that he would no further proceed against his offering and donation, as the public instrument contains*. Therefore, since it is established *from these things* that the same M. twice conferred himself and his property upon your monastery, and it is not proved on the other side that *M.* was a minor in years at the time of each offering, the proof of an exception of this kind does not destroy

your proof, since, even if he was a minor in years at the time of the first offering, he could nevertheless have been of age at the second.

Furthermore, since the phrase "a minor in years" could be understood in two ways—for both one who is younger than fourteen years and one who *is younger than* twenty-five years is customarily called a minor in years—the doubtful phrase did not harm your contention, since a donation made under twenty-five years, *especially* one confirmed by oath, was valid. But even if what had been done by the said A. were valid, since one who instituted a monastery as his heir was nevertheless not to be understood to die without an heir, this did not harm the monastery.

And when the aforesaid cardinal reported in the hearing of us and our brothers the things proposed before him, we considered that the beloved son H., cardinal deacon of Saint Eustace, should be appointed to advise. Therefore the same beloved son H., cardinal of Saint Eustace, *having more fully understood the merits of the cause,* considering that your syndic had fully established his contention and that nothing had been sufficiently proved on the opposite side—since, even if it had been shown through witnesses that M. was a minor in years at the time of his offering, it had not been expressed whether he was a minor at the time of the first or second offering, nor by how many years he was a minor—rendered sentence by our mandate. Imposing silence upon the aforesaid G. and B. concerning the things which they sought from the monastery, he condemned them to restitution of those things which by their own temerity they had invaded from the goods of the aforesaid M. We therefore confirm that sentence by apostolic authority.

Chapter IX

Latin source headnote: If plaintiff and defendant prove in the interdict for retaining possession, the one prevails who proves the older possession, especially one justified by title, or has adduced better proofs with respect to possession. This is what it says notably; and the summary is sufficiently proved at the verse "from the foregoing," when the verse "especially" is weighed.

The same.

Although the cause which is conducted between the Church of Ravenna and the commune of Faenza concerning jurisdiction, honors, and district in the village of *Luci*, Saint P., and the castle of Ariolo, which the said church proposed pertained to it by right—(*And below:*) *But because it was very burdensome to each party to produce witnesses before us, we commanded the Bishop of Piacenza that within three months, appeal being removed, he should receive the witnesses whom each party should determine to produce both concerning the principal business and against the persons of the witnesses, in such a way, namely, that, restraining an unbridled multitude, he should by no means permit them on each side to exceed the number forty.* (*And below:*) *And thus afterward the proctors of both parties returned to our presence with the sealed attestations.*

Furthermore, when the attestations had been *solemnly* published, the syndic of the people of Faenza proposed that he wished to object and prove certain things against the persons of the witnesses produced by the other party, while the steward of the church asserted that this ought not to be done. Concerning this, *when debate had been conducted on each side for some time, finally* we decreed by interlocutory judgment that he should by no means be heard *concerning this*, since he had not taken care to produce witnesses of this kind within the space of three months contained in our letters, within which term each party could introduce witnesses both against the persons of witnesses and concerning the principal business.

After this the same *syndic* objected against the aforesaid witnesses that, having been corrupted, they had spoken falsely, *and petitioned that the faculty of proving the complaint of falsehood be granted to him*. Hence, because such an exception can be interposed not only before but even after sentence *according to lawful sanctions*, although some believed that the party of Faenza had interposed an exception of this kind through calculated malice to impede the course of the business, nevertheless, because we are unwilling to deviate from the path of law, we commanded *the beloved sons* Masters G. and T., *dwelling at Bologna, through our writings* that, *having summoned the parties*, they should take care within a month to receive and examine the witnesses whom the proctor of Faenza should determine to produce concerning this exception, subtly inquiring into the individual circumstances *and faithfully reducing their depositions to writing*. Another month was thereupon granted to the proctor of the aforesaid church, within which, if he wished, he might produce witnesses before them for the reprobation of those witnesses; *and, faithfully writing down their statements, they should appoint to each party a term of twenty days, within which they should present themselves before us with the attestations to receive sentence. Therefore, when the parties again appeared before us and attestations of this kind had been published, we heard whatever they wished to propose.*

Although the party of Faenza produced many witnesses concerning the principal business, *to prove that from long-past times the men of the aforesaid places had furnished them services in bans, pleas, ditches, collections, military expeditions, and certain other matters pertaining to the district*, nevertheless, scarcely six *only* of them remained concordant, since *many* others contradicted themselves in the course of their testimony, and certain others were singular in the statement of their testimony. Although certain witnesses were introduced on behalf of Faenza to disprove some of the witnesses of the Church of Ravenna, nevertheless most of them are rejected because they very clearly contradict one another. Certain few others, although they are not expressly rejected, are nevertheless of such bad reputation and slight standing, *as was proved through the attestations produced*, that no or little faith is to be given to their statements.

The same witnesses of Faenza are also generally repelled because they do not prove that for the proving of which their syndic bound himself, namely, that, having been corrupted, they had spoken falsely; for, even if they appear to say something about corruption, they say nothing at all *about falsehood. But it was manifestly proved through many witnesses of the Church of Ravenna, greater than every exception, that the Church of Ravenna had possessed the village of Luci, Saint Potitus, and the castle of Aureolo from the longest time with every honor, district, and jurisdiction, all the articles expressing jurisdiction, honor, and district having been individually specified.*

From the foregoing, therefore, it appears sufficiently clearly that the *Church of Ravenna*, through witnesses more numerous in number, whom the light of truth assists more fully and who also expressed in their testimony things more fitting to the business and nearer to the truth, sufficiently showed that it possessed the aforesaid places from sixty years ago and thereafter with every jurisdiction, honor, and district. Through this it is evident that, if the commune of Faenza received any services in the aforesaid places from fifty years ago and thereafter, as their witnesses appear to depose, they undoubtedly began to receive them without just title, since two persons cannot simultaneously possess the same thing wholly and in the same manner, especially since the same people of Faenza do not show a just title of possession, and it is very clearly gathered from the

privileges of the emperors and Roman Pontiffs granted to the Church of Ravenna that the possession of that church in the aforesaid places was just.

Therefore, since it is established that the people of Faenza, from the time from which they strive to prove that they possessed, less justly and without title occupied certain things in the aforesaid places by their own temerity, *and in the course of time extorted them through violence, as is manifestly proved through many witnesses of the Church of Ravenna*, and since the steward of the same church petitioned *before us* that the commune of Faenza be prohibited from disturbing or disquieting force concerning the aforesaid matters, we, recognizing that in this case the interdict *Uti possidetis* does not have place in such a way that we ought to say, "As you possess, so shall you possess," since the proofs of the church are far stronger and it is therefore superior in the interdict, *by the counsel of our brothers* condemn the commune of Faenza to [submit] to it. With respect to the possessory judgment, concerning which alone proceedings were conducted, we impose perpetual silence upon the commune concerning jurisdiction, honor, district, and other things generally pertaining to this in the aforesaid places; and we prohibit it from presuming, either personally or through others, to trouble the Church of Ravenna or the inhabitants of the aforesaid places in any respect concerning these matters.

Chapter X

Latin source headnote: If persons name someone as a son, and he is commonly reputed to be so, credence is not afterward given to one of them swearing the contrary.

The same.

You informed us through your letters that, when T., a citizen of Tivoli, had kept a certain woman as a concubine for seven years and had meanwhile received no offspring from her, and when she afterward departed from him but returned to him not long afterward, she asserted that the son whom, after returning, she bore in his house had been received by her from him. *Although he said at first that this boy was by no means his son, since that woman, living with him for seven years, had not conceived from him, finally, overcome by the insistence of the woman and others, he acknowledged him as his own son, calling him by the name Rainaldus. And when the same R. reached manly age and frequented the house of Saturnella, the sister of T. himself, who publicly named him as her nephew, he betrothed and carnally knew Sophia, the daughter of Saturnella herself, with whom he had had daily association. When this came to the knowledge of Saturnella, she harshly reproved them both and, retaining her daughter with herself, removed the aforesaid R. from the house. And when the mother of Rainaldus himself learned that the father of the same Sophia gravely threatened R., she publicly swore before many persons in the square of the city that Rainaldus was by no line of relationship related to the aforesaid Sophia, affirming under the force of the oath furnished that she had received Rainaldus from someone other than the aforesaid T.*

But because that woman at first steadfastly asserted that she had received R., concerning whom proceedings are conducted, from the said T., and the same T., overcome especially by the insistence of the aforesaid woman, publicly acknowledged him as his own son, and because he was commonly named and held as the son of them both, the oath of the same woman afterward furnished to the contrary is not to be upheld, since according to lawful sanctions it is exceedingly unworthy that what anyone has clearly attested by his own voice, *that* he should be able in the same case to weaken by his own testimony. Hence it consequently appears that the aforesaid R. cannot in any respect have as

wife the *aforesaid* Sophia, granddaughter of the aforesaid T., whose first cousin he is presumed at first sight to be. [*Given at the Lateran on the fifth day before the Kalends of December, in the thirteenth year of our pontificate.* 1210.]

Chapter XI

Latin source headnote: A judge ought to have a notary or two suitable men who write the acts of the judgment; otherwise, if any difficulty arises, he will be punished by his superior, nor is he believed concerning the proceeding except insofar as it is established by the acts or otherwise by lawful documents.

The same, in the General Council.

Because an innocent litigant sometimes cannot prove a true denial against the false assertion of an iniquitous judge, since by the nature of things there is no direct proof of the act of one denying, lest falsehood prejudice truth or iniquity prevail over equity, we establish that, both in an ordinary and an extraordinary judgment, the judge shall always employ either a public person, if he can have one, or two suitable men who shall faithfully write down all the acts of the judgment: namely, citations *and* delays, recusations *and* exceptions, petitions *and* answers, interrogations *and* confessions, depositions of witnesses *and* productions of instruments, interlocutory judgments *and* appeals, renunciations, conclusions, and the other things which arise and are to be written down in fitting order, designating places, times, and persons.

And all things thus written shall be delivered to the parties in such a way that the originals remain with the scribes, so that, if a contention arises concerning the judge's proceeding, the truth can be declared through this; to the end that, when this safeguard has been employed, deference may be given to honorable and discerning judges in such a way that the justice of innocent persons is not injured by improvident and iniquitous judges. But a judge who neglects to observe this constitution, if any difficulty arises because of his negligence, shall be chastised by the superior judge with due correction; nor shall a presumption be made in favor of his proceeding except insofar as it is established in the cause by lawful documents.

Chapter XII

Latin source headnote: If it can be proved that a defendant committed an offense, his proof that he did not commit the offense is not to be admitted.

Honorius III, to the Archbishop of Lund and His Suffragans.

You should know that it has reached our hearing that the priests and clerics of Denmark, rashly relying *against the canons and lawful sanctions* upon the law of the kingdom through which a negative is proved, are reputed innocent of crimes which can lawfully be proved against them by witnesses worthy of faith if they can purge themselves concerning them in any manner. *Hence it happens that sometimes they adduce criminals like themselves for their purgation, so that those persons ought in similar circumstances to respond to them at the opportune time, and many crimes are committed more boldly by the same persons.*

Therefore, wishing that this pest contrary to every law be entirely uprooted from the clergy, [*by commanding through apostolic writings*] we order *your fraternity* that in a proof of a negative of this kind,

provided that the affirmative can be proved on the opposite side, you shall hear no one *against the canonical sanctions in the ecclesiastical forum*. Rather, admitting canonically in purgations only men of good reputation, you shall know that a person who is stained with the mark of infamy concerning a similar fault is less suitable to purge any crime. [*Given at Rome on the fifth day before the Kalends of January, in the second year [of our pontificate]*. 1218.]

Chapter XIII

Latin source headnote: The boundaries of dioceses are proved through ancient books, supporting evidence, witnesses, and reputation.

The same, to the Bishops of Orense and Lamego.

Since we have considered that the cause conducted between *our venerable brothers*, the Bishops of Coimbra and Idanha, concerning the delimitation of their dioceses, should be committed to you, we command *your discretion* that, *when you come to the principal matter in the aforesaid cause*, you shall proceed in the *business committed to you, having God before your eyes*, according to the divisions which are better proved through ancient books or in another manner, and also according to witnesses, reputation, and any other supporting evidence.

Chapter XIV

Latin source headnote: The matrons through whom virginity is proved can be discredited.

The same, to the Bishop and Archdeacon of Sens.

The matrimonial cause which is known to be conducted between V., a young man, and G., a girl of Sens who professes herself a virgin and a nun, *because you, brother bishop, did not send it so instructed that we could freely proceed in it as far as the decision of a definitive sentence, we remit to you to be more fully instructed.* We command your discretion that meanwhile, *by apostolic authority*, you place that girl in the monastery which she entered, so that she may dwell there safely until it is decreed by judicial sentence what ought to be done. Afterward, *as justice shall dictate*, you shall receive not only the man's proofs, *as he had protested*, which he wishes to introduce against those women who were introduced on behalf of the girl to investigate the signs of virginity, but also the other proofs touching this business which either party should determine to produce. And because, as the canon says, the hand and eye of midwives are often deceived, we will and command that you shall take care to appoint still other honorable, provident, and prudent matrons to inquire whether the said girl is fortified with the privilege of virginity, *and shall remit the cause to us more fully instructed under your seals*.

Chapter XV

Latin source headnote: Acts ordering the litigation, even when done before the first judges, create faith before the second judges.

Gregory IX, to the Provost of Saint Mary of Magdeburg and the Dean of Meissen.

When, of good memory—(*And below:*) Since the original acts are said to have remained with the former judges, we command that, seeking them with every diligence, you shall remit to our presence the acts themselves, if they can be found, together with whatever the parties shall determine lawfully to propose, reduced to writing. Otherwise, since no doubt is raised concerning the joinder of issue

over the status of the monastery of Pigam and certain spoliations committed against its abbot by the Bishop of Merseburg, you shall receive the proofs of the parties anew; and, hearing a discussion of settlement if the parties wish to hear it, you shall take care to remit to us both what you shall find concerning this and the sufficiently instructed cause.

Title XX: On Witnesses and Attestations

Chapter I

Latin source headnote: It is brief.

From the Council of Mainz.

It pleased the holy assembly that witnesses should not be hired for *giving testimony* at a price; that all persons who are suitable and faithful should be assumed as witnesses, *so that the person against whom they ought to testify can impute no infamy to them*; and that no one shall give testimony unless fasting.

Chapter II

Latin source headnote: A reception of witnesses made against a person not cited is invalid.

Gregory, to John the Defender, Going to Spain.

In the name of the Lord—(*And below:*) But what the same bishop says, that in his absence even persons of the vilest condition were produced as witnesses, is to be known as of no moment under the law of the Novel Constitution, which speaks concerning witnesses in these words: [*"We have also rather often learned this: that certain persons enter either before the defenders of places, or before the most illustrious judges of provinces, or even, as is customary, here before the most illustrious master of the census, and complain as though they suffered something contrary to the laws from another, or were otherwise injured or damaged, wishing to produce witnesses. But"*] "lest it afterward be objected against them that these things were conducted and completed by one party, it is necessary that the testimonies be given after that person has been admonished by the judge or defender to come and hear the witnesses. But if he is unwilling to come, and is unable to come not from some unavoidable necessity, we decree that testimonies of this kind shall be valid as though they had not been constituted by one party, but had been given in his presence." Behold, the adversary must always be admonished to come to hear the witnesses; and because this was omitted here, it is necessary that what was done contrary to law possess no validity. [*But what kind of witnesses, etc.*]

Chapter III

Latin source headnote: A woman testifies against a cleric when proceedings concern a crime.

The same, to Sabinus, Defender of Sardinia.

Because certain crimes concerning the person of Epiphanius the priest have been reported to us, it is necessary that you investigate everything more diligently and hasten to bring here *together* either the women with whom he is said to have committed them or others whom you perceive to know something about the *same* cause, so that through ecclesiastical coercion the things which are true can clearly be disclosed. [*These things, however, etc.*]

Chapter IV

Latin source headnote: Where proceedings are conducted for correction by preventing sin, the principal person is admitted as a witness.

Pope Paschal II.

In every business, the principal person, speaking the truth about a matter known to him, is most rightly to be held as a witness; when *indeed* one person is joined to him, two witnesses are produced, and when two are joined, three are produced. The Lord plainly shows this when he says: "If your brother sins against you, correct him between you and him alone; but if he does not hear you, take with you one or two witnesses, so that in the mouth of two or three witnesses every word may stand"; *and elsewhere [the same] affirms, saying: "Let not one stand against another, but in the mouth of two or three witnesses let every word stand."* Likewise, elsewhere he affirms, saying: "I am he who bears testimony concerning myself, and the Father bears testimony concerning me; for in your law it is written that the testimony of two men is true."

Chapter V

Latin source headnote: It states what sort of persons those who depose concerning consanguinity ought to be, and how they ought to swear.

Eugenius III.

Whenever persons are sought to be separated because of relationship by affinity *or consanguinity*, it *ought to be affirmed* by two or three witnesses who survive from the same family relationship, or it ought lawfully to be proved by the same number of older and better persons of the same place. The proof of the witnesses ought to be made by a twofold oath: they are to swear that they have not been induced to swear this through private hatred, friendship, or for any advantage which they have had, have, or will have; *afterward they ought to swear* that they received the truth of the matter from their ancestors, as they themselves say, and believe it to be so.

Chapter VI

Latin source headnote: A prelate and clerics who do not conduct the cause of a church can testify in it.

The same, to the Prior and Brothers of Holy Trinity.

Furthermore, *by our authority*, we establish that it shall be lawful for you to give testimony in the causes of your church, provided that one or two of you are appointed to bring actions and answer them; their testimony ought not to be admitted in the causes in which they are appointed as plaintiffs or representatives.

Chapter VII

Latin source headnote: If proof of an exception interposed against a produced witness is not admitted before the witness's statement is received, in a case in which it ought to have been admitted, an appeal is lawfully made. This is what it says according to the reading which Panormitanus sets down.

The same, to R., Bishop of Hereford, and the Abbot of Sard.

A complaint was brought to us on behalf of the priest A. that, when *he* had canonically obtained the church of Clunoden and had possessed it peacefully for thirty years and more, a certain knight named H. *provoked him from it with grave vexations and injuries and finally*, suppressing the fact that he was a layman, obtained *our* letters to judges, directing that, if the said priest was the son of the person who had most recently ministered in that church *and held it by hereditary right*, or *if* he publicly kept a concubine, they should *entirely* remove him from the aforesaid church.

Finally, *however*, when the *same* knight, through an intermediary, drew him into a cause before the aforesaid judges, he is said to have produced certain infamous and notorious laymen to *give* testimony, *namely that the aforesaid priest was the son of that priest who had most recently ministered in that church*. Although the *aforesaid priest A*. asserted that those *witnesses* should not be received because certain of them were manifest thieves and robbers, while certain others had been convicted of perjury in another cause, and *steadfastly* said that he would prove this, the *aforesaid* judges nevertheless, after receiving such witnesses *of the adverse party*, even after the appeal *which he proposes that he interposed concerning this*, awarded the aforesaid church away from that *priest* in his absence. It is now held occupied by the son of the steward of the *aforesaid* knight.

Therefore, because we fully confide in you, we have considered that the cause itself should be committed to your discretion; by commanding you under the authority of the present letters, we order that, *having summoned the parties before you, you shall diligently inquire into the truth of the matter concerning this*; and if it is established to you that the aforesaid priest was not lawfully despoiled of the aforesaid church through suitable witnesses, you shall, after quashing the sentence of those judges and notwithstanding letters of confirmation, if any were obtained concerning the same church, restore that church to the same priest, *delay, contradiction, and appeal ceasing*, and shall not permit him *henceforth* to be troubled concerning it *by the aforesaid knight or by the person who holds that church*. But if the matter has itself otherwise, you shall *nevertheless* hear the cause and determine it with a due end. You shall take care to admonish *and diligently induce, from consideration of God and love of justice*, any witnesses whom the same A. invokes in testimony of his assertion to give testimony to the truth concerning these matters before you, *and not to presume to conceal anything concerning this to the peril of their salvation*.

Chapter VIII

Latin source headnote: A judge ought to send a discerning examiner to receive witnesses who cannot conveniently come to him.

The same, to the Bishops of Exeter and Worcester.

If any of the witnesses are sick, aged, consumed by weakness, or oppressed by poverty, so that they cannot be brought to your presence, you shall send suitable and discerning persons to receive them.

Chapter IX

Latin source headnote: A sentence is to be reconsidered if it is established that it was rendered according to the statement of corrupted witnesses. This is what it says according to the reading which Panormitanus holds.

Alexander III, to the Bishop of Beauvais.

As was intimated to us *on your behalf*, certain *of your parishioners*, having received money, furnish oaths concerning a relationship between a man and wife, through which a sentence of separation is promulgated between them; but afterward, asserting privately that there is no line of consanguinity between them, they say that they were corrupted *by gifts and* gave testimony to falsehood. Concerning this we answer as follows: if the man and wife, or either of them, has passed to second vows, *it appears that no other remedy remains except that* penance be enjoined upon the witnesses for perjury and for the adultery of one or more persons to which they gave cause. But if the same man and wife have not migrated to second vows, diligent inquiry is to be made concerning those before whom the corruption took place; and, if such persons are produced through whom the truth of the aforesaid corruption can be proved, the sentence is to be revoked after their testimony has been received. For the testimony of the aforesaid persons, since they are perjurers, is not to be admitted in this case in any respect.

Chapter X

Latin source headnote: An associate in the crime and the gift does not testify even in the crime of simony. And the testimony of one person does not suffice for condemnation.

The same.

Coming to us *with your letters*, L., *your* priest, showed us by his report, *and your letters contained the same thing*, that *when he had been instituted in the church of Oven*, it was objected against him that he had not had a canonical entrance into the church of Oven, *namely* because he had *previously* promised to remit to each parishioner five barrels of wine which they had been accustomed to give as a benefice to the priest serving *that church* there for the time being. But when two persons appeared who deposed under oath that the aforesaid priest had made such a promise and [*said*] that that agreement had been *improperly* made with one of them, you judged concerning the priest as *was fitting and as the order* of reason requires. And we commend your sentence, *as is worthy*, because the person who was infected with the same crime could not testify against him concerning it, no one who has confessed concerning himself is to be believed against another in the same crime, and the testimony of one person does not suffice for anyone's condemnation. [*Indeed, what is in the letters, etc.*]

Chapter XI

Latin source headnote: Attestations received in one judgment create faith in the same cause and between the same persons before another judge.

The same, to the Abbot of Saint L. and the Prior of Saint C.

We commit to your experience for hearing, and for determination with a due end, appeal being removed, the cause *which has for a rather long time been conducted between the monks N. and O. concerning the election of each made in the monastery. Therefore, by commanding through apostolic writings*, we order *your discretion* that, *having summoned the parties before your presence and* having received the attestations of both parties which were received by other judges, *admitting other witnesses if any suitable ones are produced, unless the attestations themselves have been published, and after the arguments on this side and that have been diligently heard and understood*, you shall determine the cause itself with a due end, *the remedy of appeal being removed*.

Chapter XII

Latin source headnote: Clerics are not to be repelled from giving testimony in the cause of their church without a reasonable cause.

The same, to the Archbishop of Canterbury and the Bishop of Worcester.

When the messenger *of the canons of Plutin and the messenger of Joel, a knight, etc. (And below:) Furthermore,* let it not escape your prudence that clerics are not to be repelled from giving testimony concerning the *own* business of their church unless another reasonable cause impedes.

Chapter XIII

Latin source headnote: A crime now proved repels a witness who has not otherwise been condemned for that crime.

The same, to the Archbishop of Canterbury.

Concerning what *indeed* you asked *us*—whether *those* witnesses against whom crimes are objected by the adverse party are to be discredited in a criminal or civil cause—we answer *your prudence* that, even if they have not previously been convicted of or confessed those crimes, provided that they are convicted of them, they ought not to be admitted as witnesses.

Chapter XIV

Latin source headnote: A layman does not testify against a cleric in a criminal cause, but he accuses for an injury to himself or his people.

The same, to the Archbishop of Salerno.

For the rest, the censure of the sacred canons teaches more clearly that laymen are not to be admitted in any respect to accusation or testimony against a cleric in a criminal cause, unless perhaps they prosecute an injury to themselves or their people; and even then they can be admitted not to testimony but to accusation. *But if, etc.* (*Cf. c.* 4, *On Judgments, II.* 1.)

Chapter XV

Latin source headnote: In ecclesiastical and civil causes, three productions of witnesses can be made; but a fourth is not admitted without legal solemnity. And after the statements of the witnesses have been published, they can be debated publicly. This is what it says according to the common reading, which agrees with the words of the text.

The same, to the same.

In ecclesiastical or civil causes, witnesses ought not to be produced beyond the third production unless a certain solemnity expressed in the laws is employed. And when the statements of the witnesses have been published, they can be debated publicly.

Chapter XVI

Latin source headnote: If someone proves that an act was performed after an appeal and the adversary proves that it was performed before, the first proof is preferred and the act is judged invalid unless the second proves that it occurred before every appeal.

The same, to the Provost and Canons of the Church of Embrun.

When you, son provost, with certain of your canons, and *your venerable brother* [*our*] archbishop, *for the cause which was conducted between you and him*, were established in our presence, *the archbishop asserted that he had excommunicated you before the appeal and petitioned that his sentence be confirmed; but you proposed to the contrary that he had rendered the sentence of excommunication against you after the appeal, and for this reason you said that it was of no moment. Both you and the other party also objected that witnesses had been produced on each side and their attestations received. But we, having heard and understood the arguments and allegations of both parties and having diligently inspected the attestations*, since it is established that your witnesses swore that he rendered the sentence of excommunication after the appeal and the archbishop's witnesses similarly swore that it was before the appeal, wishing kindly to interpret the statements of the witnesses *and to provide* that they not be marked with the guilt of perjury, because both could have occurred—that the sentence was rendered after the first appeal and before the second—*by the common counsel of our* [*brothers*] we *announce and* decree that the same sentence is not valid. [*But so that this our determination, etc.*]

Chapter XVII

Latin source headnote: In an appellate cause, new and former witnesses are produced only concerning new articles, after an oath has first been received according to custom.

The same, to the Bishop of Piacenza.

Through the letters of your fraternity you wished to consult us whether new witnesses are to be received concerning an adjudicated question in which it is established that witnesses were renounced on each side, and whether, after witnesses have been received in the first cause, it is lawful to propose anything new concerning adjudicated questions on account of the appellate cause. *Although, therefore, it did not become fully known to us from these things whether the parties desire witnesses to be introduced concerning the same or new articles, nevertheless, because you wished to consult us concerning this when you* [*do not*] *have an abundance of persons learned in law*, we have considered that you should be answered that, in an appellate cause, if new articles should happen to arise concerning which one of the parties wishes to introduce new witnesses or to prove something through those already received, we believe that they can be received only concerning the new articles, after oaths according to the form for receiving witnesses have first been received from them.

Chapter XVIII

Latin source headnote: One who swore not to give testimony is compelled to testify if the attestations have not been published.

The same, to the Bishop of Exeter.

The priest R. intimated to us that the cleric G. bound his chaplain and very many others of his witnesses by an oath that they would not furnish testimony, counsel, or aid to him against G. Therefore, *by the authority of the present letters*, we enjoin upon you that, if their testimony has not been published and witnesses have not been renounced, you shall not postpone receiving those who are bound by the oath and other suitable persons, if necessary, *whom he* produces *as witnesses*.

Chapter XIX

Latin source headnote: Publication or renunciation of witnesses concerning certain articles does not prejudice a person wishing to produce witnesses concerning others. This is what it says in relation to the title.

The same, to the Abbot and Brothers of Martura.

We formerly committed to our sons, the archpriest of Volterra and the Abbot of Spognia, as judges for determination *with a due end, appeal being removed*, the cause which is conducted between you and *our beloved sons*, the pleban and clerics of the *parish church* of Saint Mary of Martura. And when each party was *for this reason* established in their presence, and witnesses had been received on each side and renounced by both parties, and the attestations *of both parties* had also been published, you brought into the midst a certain privilege recently obtained from us, *asserting that you had obtained from us certain other defenses which appeared to obscure and impede the arguments of the aforesaid parish church, wherefore the cause itself could not yet be determined. But because it lies upon our solicitude to preserve unimpaired the rights of each church and to impose an end upon lawsuits and contentions, by commanding* the judges themselves we ordered that they should *summon those parties before their presence; diligently hear the arguments on this side and that* concerning other articles, if there were any other than those concerning which witnesses had been received and their attestations published; receive any suitable witnesses produced; and decide the cause by agreement or through justice, no articles recently obtained from us through your messengers—which are contained in your privilege or in other letters which we granted you after we committed the cause itself to those judges—furnishing an impediment to the aforesaid parish church in this cause.

But because *our venerable brother I.*, the Bishop of Florence, intimated to us *through his letters* that certain articles were inserted into the same privilege *which we recently granted to your monastery* and appear contrary to reason, *by commanding you through the present writings, we order that, as you hold dear the grace of blessed Peter and our own, you shall transmit* that privilege to our presence with your messenger, *who shall come safely to us with it, delay and occasion ceasing*.

Chapter XX

Latin source headnote: One laboring under a similar disease is repelled from testimony.

The same, to the Bishop of Noyon.

The persons of the churches—(*And below:* [*Cf. c.* 4, *On Appeals, II.* 28.]) But if businesses *of this kind* are ventilated before you or anyone else, we will that, if persons laboring under a similar disease are brought forward as witnesses by either party, they shall not be admitted to testimony if it is certain or they can lawfully be convicted concerning this.

Chapter XXI

Latin source headnote: A Christian is admitted as a witness against a Jew.

The same, in the Lateran Council.

Jews or Saracens—(*And below: cf. c.* 5, *On the Jews, V.* 5.) We judge also that the testimony of Christians against Jews is to be received in all causes, since the latter presume to use their witnesses against Christians; and we decree that whoever wishes to prefer Jews to Christians in this respect is to be

struck with anathema, since they ought to be subject to Christians and to be supported by them for humanity alone. [*If any, etc. Cf. c.* 5, *On the Jews, V.* 5.]

Chapter XXII

Latin source headnote: The testimony of a mother is suspect where her daughter claims as husband a man superior to herself. And at the statement of the mother alone deposing concerning an impediment, a marriage is impeded, but a contracted marriage is not dissolved.

The same, to Cardinal Matthew.

Concerning what your devotion sought from us—whether, when a man denies that he betrothed a woman, the mother of the woman herself and another woman can be received as witnesses—we answer your consultation in this way: since a mother appears to love the advancement and honor of her daughter, where the man is superior in riches and nobility, power, or honor, her testimony appears to be *altogether* suspect, and therefore not to be admitted in any respect.

But concerning that question which you posed, whether a woman is not to be joined to a man because the mother alone of either one confesses that they are consanguineous, we answer *your discretion in this way*: if marriage has not been established between them, when the mother affirms that they are consanguineous, they ought not to be joined, because there is no slight presumption that they touch one another by a line of consanguinity, *since the mother confesses it*. But if the marriage has been established, it ought not to be dissolved without the oath of several persons.

Chapter XXIII

Latin source headnote: For decision of a cause, especially on behalf of a Jew, the testimony of one person does not regularly suffice, but that of two persons of proved life and praiseworthy conduct does.

The same.

Although, by duty of the office committed to us, [*we ought to assist with provision all the faithful of God, nevertheless we ought with vigilant care more attentively to defend ecclesiastical men from the harassment of depraved malignant persons, to whose governance we have, although of insufficient merits, more specially been appointed by the providence of God.*] *It has, however, been brought* [*to*] *our hearing that the Jews dwelling in your city have come to such pride and elation that, whenever a cause has arisen between them and any cleric, or between you and them, they draw you before a secular judge and litigate with you before any judge; through a simple charter without witnesses, or through one Christian or Jew of any sort, they intend to prove their cause contrary to every justice and reason, and they do not receive against themselves* [*even*] *the testimony of great and approved men.*

But because it is not lawful for any Christian—and much less for an enemy of the cross of Christ—*namely, to draw ecclesiastical men before a secular curia* and to impose an end upon his cause by the purportedly lawful testimony of only one person, [*by commanding*] *through apostolic writings* we order *your discretion* that, if a question arises between you and any *Christians or* Jews, *you shall not presume, at anyone's summons, to approach a secular curia to treat the business or be judged there; but, as justice requires and the reason of equity demands*, in any cause you shall admit the testimony of no fewer than two or three Christian men—and especially clerics—who are of proved life and faithful conduct, according to the Lord's saying: "In the mouth of two or three witnesses every word stands." For, although there are

certain causes which require more than two witnesses, nevertheless no cause is *reasonably* determined by the testimony of only *one* person, however lawful. [*In addition, etc.* (*Cf. c.* 8, *On the Jews, V.* 5.)]

Chapter XXIV

Latin source headnote: Witnesses whom the plaintiff produced from his household are not suitable.

The same, to the Bishop of Fermo.

In the letters—(*And below:*) A certain nobleman of your bishopric, having lawfully joined a certain woman to himself, after he had kept her in *his* house for almost seven years, asserted that before marrying her he had known carnally her father's female cousin; to prove this he produced three witnesses from his household. We therefore answer that, if the matter is so, you shall for no reason permit him to be separated from his wife on account of their testimony, nor shall you hear any persons against them unless they are of proved life and reputation, concerning whom it would not be likely that they ought to perjure themselves for anyone.

Chapter XXV

Latin source headnote: Until the attestations have been published and witnesses renounced, witnesses can be produced; afterward, however, they cannot be produced concerning the same article, but they can be concerning another. This is what it says in relation to the title.

Urban III.

When *our beloved son* Master M. came to the Apostolic See, he explained to us that Pope Lucius, our predecessor *of happy memory*, committed to judges for determination with a due end the cause conducted between him and *our beloved son*, the Abbot of Sicolan. (*And below:*) *By commanding your discretion through apostolic writings*, we order that, *having summoned the parties*, if you learn that their sentence was canonically promulgated, you shall confirm it by apostolic authority *and cause it to be committed to execution*. Nor shall the appeal which is said to have been interposed here on the occasion of our predecessor's death impede it, since afterward he both *brought an action* and answered, and determined to produce witnesses.

You shall also determine by the mediation of justice, *without the obstacle of appeal*, the other questions concerning which witnesses were produced and their depositions published, or witnesses were renounced on this side and that, no others being received from either party concerning the same matter, according to the tenor of those depositions. But if there are any questions concerning which either witnesses were not produced or those witnesses were renounced, you shall hear whatever has been proposed on this side and that and impose upon them a due end, *appeal ceasing*.

Chapter XXVI

Latin source headnote: A defendant can produce witnesses to prove the contrary of what the plaintiff proved if publication of the attestations has not been made, notwithstanding a contrary custom. This is what it says according to the more noteworthy reading.

Clement III.

The course of your rescript disclosed to us that, when a conjugal question was recently conducted between the sons *and daughters* of certain nobles of your city, *because you were distracted by other more*

urgent business, you committed your functions in the ventilation of that question to certain prudent men, before whom that *party* which accused the marriage produced lawful witnesses who firmly asserted that consanguinity existed *in the fifth degree* between the aforesaid persons, placing two persons in the first degree, namely B. and I., and saying that they were brother and sister. But the opposite party said this was false—namely, that B. was the sister of I.—offering both witnesses and a public instrument to corroborate its assertion.

Hence, because the party of the accusers proposes that those witnesses are not to be received, and you affirm that it is not the custom of *your* church that, after witnesses have been received who compute consanguinity according to the form of the canons, others are admitted from the opposite side, *concerning which you request to be instructed both in the present business and in similar ones*, we answer by the present page that, if there is no other canonical matter which stands in the way, notwithstanding that custom as contrary to law, you shall not omit to receive the witnesses, *appeal ceasing*.

Chapter XXVII

Latin source headnote: Carnal union is proved by consistent eyewitness testimony; the same applies to testimony from hearing, when supporting evidence and reputation assist it.

Celestine III.

Furthermore, you wished to consult us, among other matters, when someone is accused of having known a woman carnally, whether the witnesses are to be questioned concerning sight, whether the reputation of the neighborhood alone suffices, or whether credence is to be given to sworn witnesses who confess that they are aware of the carnal union but affirm nothing concerning sight. *To these things, therefore,* we answer that, if consistent testimony concerning sight is rendered, or even testimony concerning hearing, and agreeing reputation supplies a violent presumption, and other lawful supporting evidence assists it, the testimony of the sworn witnesses *is* to be upheld. For a circumspect and discerning judge, *according to what is provided in the civil law*, will confirm the movement of his mind from the arguments and testimonies which he finds more fitting to the matter.

Chapter XXVIII

Latin source headnote: Credence is not given to the word of one judge; his writings, however, can be disproved through witnesses. This rule fails in the case of the Pope. It is commonly summarized thus.

Innocent III, to the Consuls and People of Benevento.

When from us—(*And below:*) Following both canon and civil laws, we more strictly prohibit credence from being given in causes to the word of one judge, of however great authority he may be, whether a question is conducted concerning testaments, *concerning* any other contracts, or other matters. Nor shall his writing, unless supported by the aid of witnesses, obtain such force that the testimonies of two or three good witnesses cannot and ought not to prevail over it, saving in all matters the authority of the Apostolic See. [*Therefore let no one, etc. Given at Rome at Saint Peter's on the fourth day before the Ides of June.* 1198.]

Chapter XXIX

Latin source headnote: A witness introduced concerning a dilatory exception is not believed concerning the principal matter, nor is he compelled to depose; it is otherwise if he is introduced concerning a peremptory exception. For then he can be compelled to swear to depose concerning the whole matter.

The same, to the Bishop of Tyre.

Your fraternity was led to consult us concerning witnesses *who are introduced by the parties to prove an exception*: whether they are to be compelled to give testimony to the truth also concerning the principal business, and whether those who are introduced to purge someone's infamy are to be strictly examined like the other witnesses. Therefore, greatly commending your fraternity [*in the Lord*] *because it wishes to be made certain in doubtful matters by a rescript of the Apostolic See,* we answer your consultation in this way: if the witnesses *have already* been introduced only to prove a dilatory exception, since they swore to speak the truth concerning it alone, they ought neither to be heard nor compelled to give testimony concerning the principal matter, since they have not sworn concerning that upon which they would depose.

But if, when they are introduced by either party to prove a peremptory exception, the other party should perhaps seek that they also depose concerning the principal business and petition that they be compelled to be bound by an oath to speak the truth concerning the whole business, they are without doubt to be compelled to this, unless perhaps a sufficient production of witnesses concerning the principal matter has already been made, or witnesses have been renounced, or the depositions of the witnesses have been published. [*But those, etc.* (*Cf. c.* 13, *On Canonical Purgation, V.* 34.) *Given at the Lateran on the fourth day before the Nones of January.* 1199.]

Chapter XXX

Latin source headnote: The statements of witnesses are not to be published at the petition of a third party. And one who produced witnesses before certain judges cannot produce them for the same effect before other judges, but ought to be content with their attestations.

The same, to the Bishops of Ely and Chichester and the Archdeacon of Norban.

Established in our presence, *the beloved son Master Robert, proctor* of Master R. *of Saint Edmund,* proposed that, when *the beloved sons,* the dean and chapter of York, had canonically conferred upon him the Archdeaconry of Richmond both by authority of the Lateran Council and by reason of their own privilege, *assigning to him both a stall in the choir and a place in the chapter, and when, having obtained possession of the archdeaconry through them, he had received obedience and the customary oath from the clerics of the same archdeaconry, the beloved son* Master H. *of Kent,* who is called Archdeacon of Richmond, despoiled him of it *outside the order of law* and after an appeal had been interposed to us. And when the aforesaid R. obtained letters of commission to judges concerning his restitution, the aforesaid Master H. *appealed to the Apostolic See and, approaching our presence,* obtained letters of revocation, *which the same proctor asserted had been obtained through a suggestion of falsehood.* (*And below:*)

And, among other things, the aforesaid H. petitioned that we cause the depositions of certain witnesses to be opened; but the aforesaid proctor said that they were not to be opened, since they had not been introduced in this cause, but *rather* in the one conducted between *our venerable brother,*

the Archbishop of York, and the same R. (*And below:*) *Although, however, the archdeacon, as stated above, sought that certain attestations be opened to create fuller faith for us concerning all matters, while the adversary asserted that they had been received in another cause,* we were unwilling to open them, but, *with the assent of those same persons*, considered that the cause should be committed to your examination.

Therefore, through apostolic writings, we command your discretion that, having summoned the parties, you shall inquire more diligently into the truth concerning all the aforesaid matters, discern what is canonical, appeal being set aside, and cause what you decree to be firmly observed through ecclesiastical censure, yet in such a way that, if it is established to you that the aforesaid H. produced witnesses on his behalf before the Bishop *of good memory* and the *beloved son*, the Dean of Lincoln, before you, son archdeacon, *and before our beloved son P., cardinal priest of the title of Saint Marcellus, then legate of the Apostolic See*, as delegated judges, he shall be content with the attestations deposited with him. Otherwise, notwithstanding the fact that those witnesses were produced before those judges and you, son archdeacon, if they are produced on behalf of the said H., they shall be admitted to testimony.

Chapter XXXI

Latin source headnote: After the attestations have been published, objection is not made against the persons of the witnesses; it excepts three cases and adds a determination concerning the second.

The same.

By the authority of the present letters we establish that, if anyone wishes after the depositions of the witnesses have been published to object against their persons, this shall then at last be lawful for him when he has confirmed by oath that he is not proceeding to this from malice, unless perhaps before publication he protested concerning this, or he can show that after publication he learned what he objects against their persons. Moreover, when someone has protested that he wishes after publication of the depositions to repel the persons of the witnesses, if they say anything on his behalf, credence shall not readily be given to it.

Chapter XXXII

Latin source headnote: If the witnesses of the plaintiff and defendant depose contrary things, they do not derogate from one another's credibility, but those who are worthier and depose more probable things prevail; and, if there is no disparity in the other matters, number is preferred.

The same, to the Bishops of London and Ely.

Established *in our presence, the beloved son Master Walter, in the name of the beloved son, the Archdeacon of Canterbury, by whom he had been appointed proctor for this purpose, petitioned that possession of the church of Middleton, which the beloved sons, the abbot and monks of Saint Augustine of Canterbury, had unlawfully occupied, be restored to him together with the fruits received in the meantime*, [*especially since custody of vacant churches of the diocese of Canterbury pertained to the archdeacon himself both under the common law and by the general custom of the English Church; and, when two parsons died in the aforesaid church before the monks most recently occupied that custody, the Archdeacon of Canterbury had used this right in the same church, as he said had been sufficiently proved through twenty-five witnesses greater than every exception in the presence of the delegated judges, whose depositions we heard read before us. He added, furthermore, that after the death of the last parson who died in the same church, the same archdeacon possessed the keys of the church itself, as four priests, one deacon, and one cleric most clearly testified. Hence, since we decreed that the church of Faversham be restored to the aforesaid*

monks, by equal right the aforesaid church ought to be restored to the archdeacon. But the beloved son O., monk of Saint Augustine of Canterbury, proposed to the contrary that, since the said church of Middleton pertained to his monastery without intermediary and it had hitherto possessed its custody undisturbed, as had likewise been clearly proved on his behalf through sixteen witnesses greater than every exception, they did no injury to the aforesaid archdeacon by using their own right. It had also been sufficiently shown through two monks that it freely disposed of the church itself and its property.]

Therefore, since on one side more witnesses and on the other fewer in number were produced, and since it is established that in certain matters they rendered not only different but wholly adverse testimonies, because regard ought not to be had only to multitude but to the quality of the witnesses and their depositions—which the light of truth more fully assists—from which it is fitting that the judge inform the movement of his mind, *through apostolic writings* we command your discretion that, if the witnesses produced on each side are of the same integrity and reputation, since it is established that the witnesses of the monks are fewer in number than those of the archdeacon, you shall render sentence for the *same* archdeacon, *the obstacle of any contradiction and appeal being removed*. But if the witnesses produced on behalf of the monks are of such preeminence that their authority is deservedly to be preferred to the multitude of the others, you shall absolve the same *abbot and monks* from the archdeacon's attack, *contradiction and appeal likewise notwithstanding*. [*But if not all, etc. Given at Rome on the second day before the Ides of December.* 1205.]

Chapter XXXIII

Latin source headnote: Laymen and women are admitted to prove impediments of a person elected. Add: witnesses from hearing and reputation do not prove sufficiently.

The same, to the Prior of Saint Fridianus of Lucca and Master G., Canon of Pisa.

Having *diligently heard* both your letters and the depositions of the witnesses, we *clearly* understood that nothing had been sufficiently shown against *the beloved son*, the Bishop-elect of Lucca, except concerning hearing alone and reputation, since concerning the other matters, if any perhaps appear to have been proved, the witnesses are either alone or of such a kind that they could not lawfully prove them. But because concerning the marriage which the same bishop-elect is said to have contracted with a widow, witnesses were not received because of the obstacle of appeal—namely, lest laymen or women be received against him in such a matter—*as you intimated to us by your letters, although the messengers of the same bishop-elect endeavored to prove otherwise before us*, we, so that the objection of so great an irregularity does not remain undiscussed, *through apostolic writings* command *and enjoin* your discretion that you shall lawfully receive and prudently examine witnesses, whether laymen or women, provided only that they are suitable, who are introduced *within a month* to prove this; solemnly excommunicating anyone who presumes to impede them from giving testimony to the truth.

Then, after the attestations have been published, if perhaps it is established that an irregularity of this kind has not been proved, you shall enjoin upon the same bishop-elect canonical purgation concerning the matters objected, to be furnished through seven canons of the greater church, or priest or deacon priors of the *secular* churches of the city of Lucca, of good reputation. When this has been received, you shall appoint for him a *fitting* term in which he is to present himself before us to be consecrated. But if either the impediment of irregularity has been proved or he has not furnished

the enjoined purgation within the appointed term, you, *supported by our authority and with the obstacle of any contradiction and appeal removed*, shall *entirely* remove him from the prelacy of the Church of Lucca and command the chapter on our behalf that they shall not defer canonically to celebrate the election of another.

You shall announce that the Archpriest of Lucca and G. [*Amsoff*], the sacristan, who directed to us letters against the aforesaid bishop-elect in the name of the *far* greater part of the chapter, are suspended from office and benefice until they merit to obtain our indulgence, since it is established by the aforesaid attestations that by far the greater part of the chapter had not been aware of letters of this kind. *You shall inquire, etc.* [*Given at Ferentino on the second day before the Ides of May.* 1203.]

Chapter XXXIV

Latin source headnote: In a cause concerning liberty, witnesses can be received against a contumacious person even when issue has not been joined. This is what it says notably according to the common reading.

The same, to the Bishop of Durham and the Dean and Prior of Holy Trinity of York.

When formerly *the beloved son*, the Archdeacon of St Davids, proposed *in the presence of us and our brothers* a question against *our venerable brother*, the Archbishop of Canterbury, concerning the status of the Church of St Davids, *we gave the archbishop himself a mandate through our letters that he should approach our presence concerning this, personally or through a suitable proctor, to answer. But when he neither came nor sent a suitable representative for this purpose, wishing with paternal solicitude to provide for the Church of St Davids, we considered that the cause concerning this should be committed under a certain form to our venerable brother, the Bishop of Ely, and the beloved sons, the Dean of London and the Archdeacon of Buckingham; they have not hitherto proceeded in that business according to our mandate. Therefore, lest the cause itself remain undecided, through apostolic writings* we command your discretion that, unless the adverse party can repel the aforesaid archdeacon from bringing the action through a lawful exception, after the parties, if it can be done, or their proctors have been summoned *through your messengers and letters* to a safe and suitable place and issue has been lawfully joined, you shall take care to receive in England the witnesses whom the archbishop, and in Wales those whom the archdeacon, shall determine to produce *against him*.

But if the archbishop, although lawfully cited *before you*, is unwilling to appear either personally or through a suitable proctor, or even to join issue, you shall *nevertheless* admit the witnesses, especially the aged and sick, whom the archdeacon *personally or through his proctor* shall determine to produce, *the obstacle of any contradiction and* appeal being removed; and you shall take care to send their written depositions, *enclosed under your seals*, to the Apostolic See, appointing for the parties a *fitting* peremptory term at which, personally or through suitable representatives, they shall present themselves before us to receive sentence. [*The witnesses, etc. Given at Ferentino on the fourteenth day before the Kalends of July, in the sixth year of our pontificate.* 1203.]

Chapter XXXV

Latin source headnote: After the attestations have been published, the adversary is admitted to prove the contrary if before publication he could not have been instructed concerning this contrary proof. This is what it says, and it is an exceptional case.

The same, to the Prior of Bolonic and I., Rector of the Church of Borellis.

We learned from the tenor of your letters that, when we committed to you *and the beloved son, the Abbot of Furneia,* for determination with a due end, the cause conducted between R., *son of W. of Eston,* a knight, and the woman M., *sister of W. of Arches, when the aforesaid abbot reasonably excused himself because he could not attend cognizance of the same cause, you cited the parties to your presence. When they were established in your presence,* the woman's party proposed that the said knight first furnished a corporal oath that he would take her as his wife, and afterward, having known [*her*] carnally, conveyed her into his house *and received offspring from her*.

But the *aforesaid* knight denied this altogether, adding that, even if *the things proposed by her* were true, he nevertheless could not by law have her because he had previously taken another woman, then living, as his wife. *Therefore, after witnesses had been received from each party and the attestations published,* when it appeared to have been proved through the witnesses of the *often-mentioned* knight that before the feast of the Purification of the Blessed Virgin *Mary* he had solemnly taken the woman B. as his wife, while the witnesses of the woman M. *of Arches* said that during Easter week following the aforesaid feast he had furnished an oath to marry her, the aforesaid knight urgently petitioned to be absolved from her attack.

But it was replied on behalf of the often-mentioned woman that at that time, and also previously, at which the witnesses of the said knight had said that he contracted marriage with another, he had always dwelt in the province of York, while the witnesses themselves said that this had been done far outside the said province, specifying the time and place; and she was prepared to prove this through suitable witnesses. But it was answered to the contrary on the opposite side that, since the attestations had already been solemnly published on this side and that, there was no longer place for the production of witnesses. Therefore, because you doubt whether witnesses ought to be admitted after publication of the attestations concerning that article, by the authority of the present letters we answer your inquiry that the woman's witnesses are to be admitted to prove that article. [*Given on the eighth day before the Kalends of December.* 1203.]

Chapter XXXVI

Latin source headnote: A fourth production of witnesses sought in a cause with legal solemnity is to be granted when no lawful cause opposes it; otherwise, an appeal is lawfully made.

The same, to the Prior of Saint Victor.

Our venerable brother, the Bishop of Senlis, and the beloved sons I., Abbot of Saint Victor of Paris, and F., Dean of Orléans, signified to us through their letters that, when the cause conducted between the abbot and monks of Saint Denis on the one side and the abbess and nuns of Forchelles on the other, concerning both ownership and possession of the priory of Argenteuil, had been committed to them as judges by us, and when the nuns, first entering the suit concerning ownership, had produced witnesses in it, they afterward instituted the possessory judgment, the petitory being suspended, *which, after counsel from prudent men, those judges declared by interlocutory sentence was lawful for them by right*.

Hence, *when,* in the cause concerning possession which the nuns sought—*namely* for the reason that those whom they had succeeded had been violently ejected from it—witnesses had been produced by each party, and proceedings *had* reached the point that publication ought now to be made, *the aforesaid nuns petitioned that the depositions of the witnesses be published only in the cause concerning possession. But the monks contradicted them, alleging that, just as the cause concerning ownership had first been begun, so it ought first*

to receive an end, or at least the witnesses concerning both the petitory and the possessory ought to be published together. But those judges, after hearing what was proposed on each side, when they wished to pronounce an interlocutory judgment concerning this after taking the counsel of wise men, the monks added that the nuns had renounced the production of witnesses concerning the cause of ownership. When the adverse party denied this and it was conducted between the parties as though doubtful, they pronounced interlocutorily that they would publish the attestations in the possessory and hear the monks' proofs concerning the nuns' renunciation; but the monks appealed from this interlocutory judgment to our hearing. The judges, appointing another day for the parties so that they might deliberate whether they ought to defer to an appeal of this kind, summoned prudent men and, by their counsel, without reproving their sentence, granted the monks' party a hearing if perhaps they might allege some reason for retracting the aforesaid ineffective sentence. They finally, after their appeals, strongly insisted upon the appeal previously made.

[*But because they could scarcely find assessors at Paris without their being said to be suspect—although the nuns' party finally said that they would in no way hold as suspect anyone whom the three judges together summoned—the judges nevertheless, considering the arduousness of the business, judged that these things should be intimated to us, enjoining upon the parties that on the feast of Saint Luke the Evangelist, then next to come, they should present themselves before us with letters of this kind. But when the aforesaid Abbot of Saint Victor and Dean of Orléans together affixed their seals to the letters containing this course of events, the said Bishop of Senlis deferred affixing his seal because the monks of Saint Denis complained that certain things which ought to have been included had been omitted. Hence, the parties having been recalled, they appointed the day after Saint Remigius. The monks steadfastly asserted that the nuns had had three productions of witnesses in the cause of ownership and conclusion had already been made in them, so that they were not going to be heard further in producing witnesses concerning the cause of ownership, and they offered lawful proofs concerning these things; but the adverse party denied all these things.

But when for this reason both the abbess on her own behalf and Master Thomas on behalf of the abbot and monks, around the octave of blessed Martin, which had been assigned as the term for the parties to present themselves before us, approached our presence, and when we had given them a full hearing in our consistory, the same master added that it had often been petitioned by the abbot and monks from the delegated judges that they grant them a fourth production in the cause of possession with legal solemnity. When the judges entirely denied it to them contrary to lawful sanctions, they, perceiving themselves to be unjustly aggrieved, appealed immediately to our hearing after the interlocutory judgment concerning publication of the witnesses in the possessory had been promulgated. They endeavored to show this from the testimony of certain special letters of the aforesaid Bishop of Senlis, who wrote, among many things, that in the addition which, upon recall of the parties, was made to the first letters, the monks petitioned that this clause be included: namely, that there still remained to them in the possessory judgment a fourth production, the solemnity of law having been employed, and they offered necessary proofs concerning this. The same master promised that he would prove his assertion by lawful witnesses. But the abbess, relying upon the report of the three delegates and upon certain of their letters containing that they had assigned the third day after the Purification of the Blessed Mary for publication of the witnesses produced by each party concerning possession, asserted that what had been added by the same master was entirely false.*]

We therefore, having diligently heard these and the other things proposed on this side and that, by the common counsel of our brothers, through apostolic writings command your discretion that, *coming together at Paris*, if it is established to you *through lawful proofs* that the abbot and monks sought a fourth production of witnesses in the possessory with the solemnity of law, and that for this reason they appealed within ten days after the interlocutory sentence—unless perhaps the judges denied the fourth production because they wished to restrain an unbridled multitude of witnesses—you shall admit the *aforesaid abbot and monks* to the fourth production *of witnesses*, legal solemnity having been employed, condemning them in lawful expenses if they fail in proof. And unless proceedings in the petitory have already advanced so far that ownership can be fully clear, you shall first determine the cause of possession, to which the abbess and nuns had recourse by benefit of law, and afterward proceed *lawfully* in the cause of ownership; otherwise, you shall determine both questions together. [*But those, etc. Given on the Kalends of February, in the eighth year [of our pontificate]*. 1206.]

Chapter XXXVII

Latin source headnote: Witnesses are to be diligently examined, those who impede them are to be punished, and the multitude of the witnesses themselves is to be restrained by the judge.

The same, to the Bishop of Piacenza.

When the cause known to be conducted between *our venerable brother*, the Archbishop of Ravenna, and *the beloved sons*, the commune of Faenza, *concerning the village of Luci and Saint Potitus, the castle of Aureolo, and their district, honor, and jurisdiction, had been* [*committed by us to various judges, because it could not be determined with a due end by certain of them, we, wishing to impose an end upon the suit, finally commanded our venerable brother, the Bishop of Montefeltro, and the beloved son, the Abbot of Galeata, through our letters that, notwithstanding the commissions hitherto obtained and every occasion and exception ceasing, they should assign the parties a period of three months within which they were to produce all the witnesses whom they should determine to produce concerning this cause; and, after diligently examining them and faithfully reducing the attestations to writing, if it proceeded from the will of the parties, they should determine the cause itself through the mediation of justice; otherwise, remitting the attestations with the instruments and other arguments to our presence, they should appoint a fitting term for the parties at which they should present themselves before us to receive sentence. Therefore, when the aforesaid delegates had by no means proceeded, etc.* (*Cf. c.* 6, *On the Oath against Calumny, II.* 7.)]

But because it would be exceedingly burdensome for each party to produce witnesses before us, [*by commanding*] *your fraternity, in whom we place full confidence, through apostolic writings*, we order that *within three months after receipt of the present letters* you shall receive, *appeal being removed*, the witnesses whom each party should determine to produce both concerning the principal business and against the persons of the witnesses. You shall take care to examine them diligently and, prudently inquiring into the individual circumstances—namely, concerning causes, persons, place, time, sight, hearing, knowledge, belief, reputation, and certainty—shall write down everything fully and carefully, *and shall faithfully transmit these things to us under your seal, enjoining upon the parties that they come to our presence thus instructed, so that, after the attestations have been published and the instruments produced, and after sufficient argument has been made, with the Lord as author they may receive from us a just sentence*.

The witnesses, however, etc. But if perhaps the people of Faenza or others presume to impede those whom the said archbishop should determine to produce to give testimony to the truth, after admonition has first been made you shall compel them by ecclesiastical censure, appeal being

removed, to cease from presumption *of this kind*. Wishing, moreover, that an unbridled multitude of witnesses be restrained, we will that you shall not permit the number of witnesses on each side to exceed forty, in such a way that, if the people of Faenza wish to hold ratified the depositions of the witnesses which were received by *our venerable brother*, the Bishop of Ferrara, and the Abbot of Pomposa, those witnesses shall be counted within the aforesaid number; otherwise, since the attestations themselves are closed, the same witnesses, if necessary, shall be produced again. [*Given at Ferentino on the tenth day before the Kalends of July, in the ninth year [of our pontificate]*. 1206.]

Chapter XXXVIII

Latin source headnote: Attestations received in a summary judgment do not create faith in a plenary judgment. And, notwithstanding their publication, the same or other witnesses can be received concerning the same articles.

The same, to the Abbots of New Fountain and La Chaise-Dieu.

Coming to the Apostolic See, *the beloved son* G. *de Cros*, Archdeacon of Clermont, humbly supplicated *us* that we cause the sentence *reasonably* rendered for him *by our venerable brother, the Bishop of Limoges*, concerning the deanery of the Church of Clermont, which had already in part been committed to execution, to be committed to execution in its entirety. But when *the beloved sons, the abbot and G. Dalmas,* [*a canon*] *of Clermont*, proctors of *the beloved sons*, the chapter of Clermont, being established in our presence, proposed *to us* that that sentence had been promulgated contrary to justice and after an appeal had been *lawfully* interposed to us, [*and that therefore the same archdeacon was by no means to be heard in his petition, the same archdeacon proposed to the contrary that the said abbot and canon ought not to be received as proctors, since both they and those on whose behalf they had come were bound by the bond of excommunication. For the aforesaid bishop had bound with the bond of excommunication all those who determined to oppose the sentence rendered by him for the aforesaid archdeacon; and, when litigation concerning this had been conducted for some time, we finally caused the aforesaid proctors to be absolved as a precaution. But afterward, when the same abbot and canon wished to proceed against him, the archdeacon was unwilling even thus to admit them as proctors because they conducted themselves as proctors of those who were still bound by the bond of excommunication, and therefore could not proceed at law on their behalf,*] and when the same archdeacon was unwilling to admit them as proctors or to answer their statements in any respect, *the beloved son* P., our subdeacon, *a canon of the basilica of the Prince of the Apostles*, opposed him on the other side, asserting that he *had been* canonically elected Dean of Clermont. For this reason, the said archdeacon was by no means to be heard in his petition, because the deanery itself pertained not to him but rather to P.

[*To this the aforesaid archdeacon replied that, until the sentence rendered for him had been committed to full execution, the aforesaid P. ought not to be heard to impede execution of the sentence. To this the said P. answered that the sentence rendered for the archdeacon by the aforesaid bishop generated no prejudice against him, since according to lawful sanctions a matter conducted between others does not prejudice others.*]

Therefore, when they had debated concerning these matters for some time, we pronounced interlocutorily that the said P., if he could, should establish his contention immediately. When he *to establish his contention* produced witnesses and instruments concerning this, *and when debate had been conducted on each side concerning them for some time, we* pronounced by interlocutory judgment, *because it*

was established by the things which had been shown, that it concerned his interest, so that *the same P.* could oppose the aforesaid archdeacon.

Therefore, when issue had been *lawfully* joined between them concerning both the election and the sentence, the archdeacon himself was asked *before us* whether he wished to admit in this judgment the attestations previously produced concerning the aforesaid point. *After prior deliberation*, he answered that he wished this, provided that he could object both against the persons of the witnesses and against their statements. Upon hearing this, the adverse party answered that it was unwilling to use those attestations in this judgment, since they had been received, when issue had not been joined, not concerning the principal business but concerning an incidental point. Hence it wished to produce other witnesses concerning the whole business, or the same witnesses.

But the adverse party answered that, since those witnesses had spoken concerning both the sentence and the election, and their attestations had been published in judgment, it was not lawful for P., after he had learned the things testified, to produce other witnesses concerning the same articles, especially since the aforesaid subdeacon had used those attestations in this *same* judgment. We therefore, *having heard what was proposed on this side and that*, pronounced, as justice required, that witnesses whom each party should determine to produce were to be received concerning the whole business.

Wherefore, *through apostolic writings*, we command your discretion that, after the witnesses have been received and the arguments of the parties understood, you shall determine the cause itself with a canonical end concerning both the principal and the incidental matter, *the obstacle of every contradiction and appeal being removed, causing* [*what you decree to be firmly observed.*] But because the things done in a chapter can hardly be proved except through the canons themselves, we *will and command* that as a precaution you absolve them, so that, when called to testimony, they may be able freely to testify for each party. [*The witnesses, etc. Given at the Lateran on the fourth day before the Ides of July, in the seventh year [of our pontificate]*. 1204.]

Chapter XXXIX

Latin source headnote: Even religious persons are not admitted to testify without an oath, unless it is remitted by the parties.

The same, to the Archbishop of Besançon.

To your questions—(*And below:* [*Cf. c.* 23, *On Prebends, III.* 5.]) Monks cannot produce their brothers and lay brothers as witnesses in their own causes without the furnishing of an oath, unless perhaps it is remitted by the adverse party. [*Religious persons also, etc. Given at the Lateran on the eleventh day before the Kalends of April, in the eleventh year [of our pontificate]*. 1208.]

Chapter XL

Latin source headnote: A delegated judge necessary as a witness is removed from judging, and another is substituted.

The same, to the Bishop of Arras and the Abbots of Dedimenen and Ourscamp.

It became known to us from the explanation of the beloved son, the Provost of Aire, that, when we considered that the cause conducted between him and *the noblewoman*, the Countess of Flanders,

concerning the donation of six priestly prebends, should be committed to you, *brother* bishop and *son* Abbot of Dedimenen, *and also* to the *beloved son*, the Dean of Arras, the same provost proposed *before you*, before joinder of issue, that the testimony of *that* dean was necessary to him in the aforesaid cause, since he could not create faith concerning his right except through him and only one other witness. Hence he *urgently* petitioned that proceedings be conducted in the cause itself after the dean was excluded, or that the business be suspended until *we* substituted another in his place. But you refused to admit his petition *in this respect*; indeed, rather, after the appeal *which he interposed to us for this and other reasons*, you suspended him from the donation of those prebends.

Therefore, lest his justice perish because of the want *of such* a witness, we have considered that you, *son* Abbot of Ourscamp, should be substituted in his place, commanding *through apostolic writings* that, if it is so, after the aforesaid suspension of the provost has been relaxed, you shall proceed in the *same* cause according to the tenor of the former mandate, reason going before. [*But if not all, etc. Given at the Lateran on the fourteenth day before the Kalends of March, in the eleventh year [of our pontificate].* 1209.]

Chapter XLI

Latin source headnote: Lest an abundance of proof perish, after the adversary has been cited, witnesses whom the defendant introduced are received and published.

The same, to the Judge of Sabina.

The *beloved son* [*B.*], priest of Saint N. in the diocese of Sabina, signified to us that the founders of the same church, wishing it to be free, said at the time of foundation that they retained *absolutely* no right in it for themselves. Hence, fearing that with the course of time an abundance of proof might perish, the same priest petitioned that provision be made *for him* concerning this. Wherefore, *by the authority of the present letters*, we command you that you shall diligently examine the suitable witnesses whom he should determine to produce *to you* concerning this and shall cause their statements to be reduced to public records, notifying the aforesaid founders or their heirs that they may attend the reception of the witnesses if they wish, and shall cause a public instrument to be made concerning notification thus made. [*Given at the Lateran on the Ides of April, in the twelfth year [of our pontificate].* 1209.]

Chapter XLII

Latin source headnote: If the subject matter of an old article is repeated with something added which is subjected to the necessity of proof, even former witnesses can be produced after the attestations have been published.

The same, to the Bishop and Archdeacon of Benevento.

When the cause conducted between the steward of the monastery of Saint Martin of Monte—(*And below: cf. c.* 6, *On Sale, III.* 17.) Therefore, since the abbot and brothers of that place intend *through witnesses* to prove how great the price of the aforesaid possessions was at the time of sale, *by the authority of the present letters* we command you that *within the space of three months* you shall receive, *appeal being removed*, the witnesses whom either party should determine to produce concerning this, *hear the cause and, remitting it to us sufficiently instructed, appoint a fitting term for the parties at which they shall present themselves before us to receive sentence*. But if the monastery's party produces, to prove this article, the same witnesses whom it produced to prove another, you shall nevertheless take care to receive

them, because it is one thing to have proved the excess of the deception and another to prove the quantity of the value.

Chapter XLIII

Latin source headnote: Witnesses who were present at a sentence are received and published where the sentence does not appear from a writing.

The same.

The knight Alberic took care to intimate to us that, when formerly a matrimonial question was conducted between him and C., a woman of Ravenna, before the chapter of Ravenna, finally, *as justice required*, a sentence of separation was rendered between them. But afterward the said knight *lawfully joined two wives to himself at different times and received sons from them*, and, fearing that prejudice could be generated against himself and the sons whom he received from a lawful wife from the fact that the aforesaid sentence was not reduced to writing, *humbly supplicated us that, taking paternal care for him concerning this*, we cause the witnesses who were present at the aforesaid sentence to be received. *Therefore, because it becomes us to impart benevolent favor to those seeking just things*, we command that you shall take care to receive the aforesaid witnesses, causing their depositions to be reduced to a public writing.

Chapter XLIV

Latin source headnote: After the attestations have been published, witnesses who were previously produced in a summary judgment or outside judgment can be produced concerning the same article or one directly contrary to it. This is what it says according to the more noteworthy understanding, without positing any special rule in a matrimonial cause. And then explain the text at the end, where it says "in this case"; namely, when witnesses produced elsewhere are produced again. Panormitanus.

The same, to the Bishop of Beauvais.

When in your diocese—(*And below:* [*Cf. c.* 30, *On Tithes, III.* 30.]) But whether, if a suitable accuser appears and relationship between persons already joined is proved through three or four witnesses, the depositions of those later witnesses derogate from the credibility of eleven or twelve relatives—earlier in time and more excellent in merits—who, before the marriage was contracted, swore the contrary while distinguishing the persons and degrees from whom those whose union is at issue directly descended, or whether the former witnesses are preferred to the later ones, could not undeservedly be asked. Although both those and these swore for another matter and for another reason, nevertheless, if in the second judgment the persons first sworn deposed those same things which they said in the first, without doubt their testimonies would prevail, nor could they be repelled under the pretext that the parties had learned the things testified, since such an exception has no place in this case. [*Given at the Lateran on the fourth day before the Kalends of November, in the fifteenth year of our pontificate.* 1212.]

Chapter XLV

Latin source headnote: Those who impede a party in producing witnesses can be excommunicated, and witnesses are to be declared not bound by an oath not to tell the truth. And if relatives impede

the plaintiff's witnesses from telling the truth, the defendant is punished, since this is presumed to be done by his will.

The same.

When *our venerable brother* [*Alferius*], Archbishop of Sorrento, and *the beloved son* M., canon of Sorrento, were established in our presence, while M., [*after a libellus of accusation had been framed*], denounced him for the crime of simony, [*asserting nevertheless that he was liable for the crime of injured majesty because, as he said, by the machination of the same archbishop the city of Sorrento withdrew from royal fidelity and swore to the reprobate Otto; and that the archbishop himself, while excommunicated, celebrated divine services, since after such a machination—through which persons who machinate things of this kind incur the sentence of excommunication rendered by the Apostolic See—he presumed to celebrate divine services, the archbishop, before he petitioned that the faculty of copying the libellus be granted to him, excepted against the person of the accuser that he was an enemy and conspirator, alleging that access to accusation should be interdicted to him, since according to canonical institutes enemies and conspirators ought to be admitted to the accusation of no one.

To this the adverse party answered that, since the stain of simoniacal depravity is so great that slaves are admitted against masters and any criminals whatever are admitted, and since, in betraying the crime of injured majesty, even an associate in the faction entered into is not only heard but indeed endowed with reward and honor, exceptions of this kind could not defeat the accusation concerning the aforesaid matters, especially since it concerns public liberty that crimes not remain unpunished. To these things, however, it was answered to the contrary that, since in the decree of Pope Anacletus it is expressly provided that persons who were enemies before yesterday or the day before yesterday cannot be accusers, lest in anger they desire to harm or, having been injured, to avenge themselves, and since an unoffending and not a suspect disposition of accusers is sought, and the constitution of Pope Callistus generally forbids conspirators to be admitted to anyone's accusation, while it is not expressed in any canon that an enemy and conspirator is heard in excepted crimes, lest what has not been established by the teaching of the holy Fathers be attempted through superstitious inventions, the general prohibition is to be upheld concerning the aforesaid matters, especially according to canonical equity, which ought not to open a way to acts of malice.

Amid these things, when the archbishop was questioned concerning the causes of enmity and conspiracy, he answered that the aforesaid M. had opposed himself to the bishop as a manifest adversary both when he was assumed as archdeacon and when he was assumed as archbishop. Furthermore, when a certain Neapolitan had machinated the death of the archbishop's brother and was ejected from his own city by the latter's friends, certain magnates whom the said Neapolitan touched by a line of consanguinity, regarding his ejection as an injury, induced the same Matthew to conspire with certain others for the condemnation of the archbishop himself. We did not consider that the former ground should be admitted, especially since reconciliation had followed, as was noted from the narration of the archbishop himself. But concerning the other, which M. denied, it was proposed on his behalf that every conspiracy by subjects against a prelate is not prohibited. For, since according to the decree of Pope Gelasius no cleric ought to trust that he is immune from apostolic offense if he sees a bishop transgressing in those things which apostolic authority has declared are to be followed salubriously and does not immediately take care to bring this to the ears of the Roman

Pontiff, subjects can not undeservedly conspire against a pestilential prelate, after the example of the forty bishops of Illyricum and Greece who, coming together through a profession made in writing, withdrew from Timothy, who through fear of the Emperor Anastasius had been assumed as Bishop of Constantinople.

But when the archbishop asserted that Matthew conspired against him from the foment of malice and that he would lawfully prove this, finally, with the parties consenting, we considered that provision should be made as follows: that the archbishop, receiving the libellus presented, should answer concerning the crimes objected, the faculty of proving that the same M. had conspired against him from malice being reserved to him. The framing of the libellus was as follows:

"In the name of the Lord, Amen. In the year of the Lord one thousand two hundred and thirteen, in the sixteenth year of the pontificate of the lord Innocent III, Supreme Pontiff, in the month of October, on the seventh day before its Ides. Before you, lord Innocent, by the grace of God Supreme Pontiff, I, Matthew, canon of Sorrento, denounce the lord Alferius, Archbishop of Sorrento, as guilty under canonical law of simony, because I say that in the city of Sorrento, in the chamber beside the dining room of the episcopal residence, in the time of the lord Celestine III, Supreme Pontiff, in the month of January, he promised the Archdeaconry of Sorrento to John Ciroleon, formerly canon of Sorrento, so that he would consent to his election. Likewise, I denounce him as guilty of the crime of injured majesty because, in the city of Sorrento, in his palace, in the month of May, in the time of the lord Innocent III, Supreme Pontiff, through his procurement the city of Sorrento, withdrawing from royal fidelity, swore to Otto. And I denounce that afterward he celebrated divine services many times in the Church of Sorrento, although I believe that on this account he incurred the bond of excommunication through your sentence. I, the said M., profess that I have given this libellus of inscription."

When the libellus was finally offered, the archbishop's party alleged that in a certain part it had been framed less than lawfully because it did not contain the year in which the objected crimes had been committed. For since the framing of a libellus ought to contain the month and consuls under whom the crime is said to have been committed, and consuls were appointed annually in antiquity, it appears that the year of the admitted crime ought to be expressed in the libellus. The month would also be ordered to be included in vain if there were no certainty concerning the year to which the month belongs.

To this the accuser's party answered that, since the year is not found expressed in the form of framing a libellus, just as the day is not to be included, so neither is the year of the admitted crime to be included, lest an occasion for suborning witnesses be furnished. Nor, from the fact that consuls ought to be expressed in the civil forum, although consuls were formerly annual, does it follow that a certain year is to be expressed, since the same consul could have held the office of consul at different times and in several years; hence a certain year could not be established by expression of his name. And since in the naming of the month it is not established to which year the month belongs, an occasion for suborning witnesses could not be taken through expression of the month as it could through expression of the year.

But after these and other things had been proposed on this side and that, when finally the accuser expressed that the archbishop committed the objected crime of simony in the year in which he obtained the archbishopric, by promising the Archdeaconry of the Church of Sorrento to I. Ciroleon,

formerly canon of Sorrento, if he would consent to him; and since the time when the aforesaid city swore to Otto was sufficiently manifestly established, proceedings advanced to joinder of issue, the archbishop denying the crimes alleged against him. He confessed, nevertheless, that after the city swore to Otto, he celebrated many times.

But after certain witnesses had been produced on behalf of the archbishop to prove the exception objected, with a protestation of this kind by M.—namely, that after publication of their depositions he might, if he wished, object against their persons, because the archbishop was unwilling to be content with them—without publishing their depositions, with the consent of the parties we considered that the reception of witnesses concerning both the principal matter and the aforesaid exception should be committed to your fraternity. Through apostolic writings we command you that you shall diligently examine the witnesses whom each party should determine to produce and shall faithfully transmit their written statements to us enclosed under your seal, appointing for the parties a fitting term at which they shall present themselves before us.*]

Moreover, because from the beginning the aforesaid M. protested that *the nobleman Simon of Sorrento, the full brother of the aforesaid archbishop, and certain other* relatives of the archbishop himself had through their power furnished many impediments whereby he could not have with him an abundance of proofs in our presence—since they induced certain persons to swear that they would say nothing against the archbishop and endeavor by threats and terrors to keep others from giving testimony—we, wishing by our office to provide concerning this, command that you shall render a general sentence of excommunication against all who presume to furnish any impediment to M. himself in producing witnesses. But you shall announce that those who, as has been said, are established to have sworn that they would say nothing against the archbishop are not bound by an oath of this kind, [*whereby they may freely give testimony to the truth in this cause.*]

But if any of the said archbishop's relatives presumes to impede any of the witnesses, because it does not appear likely that such things would be done against his will, and for this reason he is not free from the scruple of concealed complicity, because, if he had wished, he could have prohibited it—since according to lawful sanctions persons who withdraw the opportunity of defense from an adversary show that they favor an iniquitous cause and ought to experience the authority of the judge as mocked—you shall suspend the same archbishop from pontifical office and cause him, *the obstacle of appeal being removed*, to remain suspended until he causes that person to cease from such presumption. [*You, finally, etc. Given at the Lateran on the eighth day before the Ides of November, in the sixteenth year of our pontificate.* 1213.]

Chapter XLVI

Latin source headnote: One who has not learned the things testified and has not renounced the production of witnesses can produce, concerning old articles or chapters, even witnesses produced elsewhere.

The same, to the Archbishop of Magdeburg and the Provost of Seeburg.

When the proctor of *the beloved daughter in Christ* A., sister of the nobleman, the Margrave of Meissen, and the messenger of the illustrious Prince of Bohemia were established in our presence, *we granted as auditor our beloved son P., cardinal priest of Saint Marcellus. Before him the proctor of the aforesaid noblewoman proposed that, when it had formerly reached our hearing upon her report that the aforesaid prince had lawfully*

taken her as his wife, had treated her as a lawful spouse for fourteen years and more, and had received sons and daughters from her, the Bishop of Prague, at the petition *and command* of the same prince, promulgated a sentence of separation after an appeal had been interposed to us, while she wished to approach him in order to propose her actions before him but was prohibited by the attendants of the same *prince*, who twice or three times prohibited her entrance; from that sentence she *through her chaplain, within ten days,* caused an appeal to be made to our presence. (*And below:*)

We therefore, having understood through the aforesaid cardinal what was proposed on this side and that, considered that the attestations received for the aforesaid noblewoman should neither be approved nor disapproved, but decreed that they be reserved for the time of discussion, so that the parties might then allege for or against them; by more strictly commanding you through apostolic writings, we order that, after the parties have been summoned to a suitable place, *every excuse and contradiction ceasing*, you shall receive the witnesses whom either the noblewoman herself on her own behalf or the prince on his behalf should determine to produce concerning the proceeding of the Bishop of Prague or of the later judges, since they have not yet learned the things testified. Nor shall the noblewoman herself be prohibited from introducing on her own behalf either the witnesses whom she previously introduced or others, if she wishes, since she did not renounce the production of witnesses. [*And the acts, etc.*]

Chapter XLVII

Latin source headnote: The council lays down twelve requirements, without which testimony from hearsay is not valid for proving consanguinity in a matrimonial cause. This it says, summing generally.

The same, in the general council.

Although, from a certain necessity, it was formerly established, beyond the common form, that testimony from hearsay should be valid in calculating the degrees of consanguinity and affinity, since, because of the brevity of human life, witnesses were unable to depose from sight when calculating as far as the seventh degree; nevertheless, because we have learned by many examples and sure experiences that from this many dangers have arisen against lawful marriages, we establish that henceforth witnesses from hearsay shall not be received concerning this, since now the prohibition does not extend beyond the fourth degree, unless perhaps they are persons of weight to whom faith may deservedly be given, and, before litigation was initiated, they learned the matters testified from their elders—not, indeed, from one, since he would not suffice if he were living, but from two at least; and not from infamous and suspect persons, but from persons worthy of faith and superior to every exception, since it would appear sufficiently absurd that those should be admitted whose authorities would be repelled. Nor yet, if one person has received from several persons, or infamous persons from persons of good reputation, what they testify, ought they to be admitted as several suitable witnesses, since *even* according to the accustomed order of judgments the assertion of one witness does not suffice, even if he shines with the dignity of a governor, and lawful acts are forbidden to infamous persons. Moreover, witnesses of this kind, confirming by their own oath that they do not proceed to give testimony in the cause itself from hatred, love, *fear,* or advantage, shall designate the persons by their express names, or by a demonstration or sufficient circumlocution, and shall distinguish the individual degrees on either side by a clear computation, and shall likewise conclude in their oath that they received from their elders what they depose and believe it to be so.

But not even such persons shall suffice unless, under oath, they depose that they saw persons situated at least *in one* of the aforesaid degrees hold themselves to be blood relatives. For it is more tolerable to leave some persons joined contrary to human statutes than to separate persons lawfully joined contrary to the statutes of the Lord.

Chapter XLVIII

Latin source headnote: After publication, at the petition of the producing party, witnesses ought not to be interrogated unless, through the fraud or negligence of the examiners, they were not interrogated upon all the chapters.

Honorius III, to the Provost of Mogliano in the Diocese of Fermo.

You have intimated to us by your letters that, when the cause that is being conducted concerning certain lands between the canons of Old Saint Peter on one side and G. of Saint Simon *of Guido of Fermo* on the other had been committed to you by the Apostolic See, the said G., after three months had elapsed following the publication of the witnesses, petitions that his witnesses be interrogated again, *concerning which you desire to be instructed by an apostolic response as to what you ought to do.* We therefore *briefly* respond *to your discretion* that he is not henceforth to be heard concerning this, unless perhaps from the beginning he had petitioned that they be interrogated concerning certain chapters and this had been omitted maliciously or negligently.

Chapter XLIX

Latin source headnote: It is permitted to disqualify witnesses of proof and witnesses disqualifying those of proof; but it is not permitted to disqualify witnesses disqualifying those disqualifying witnesses.

The same, to the Abbots of Valladolid and Sacramenia in the Dioceses of Palencia and Segovia.

Although our beloved son L., cardinal priest of the title of the Holy Cross, whom we appointed as auditor for the proctors *of our venerable brother* the Bishop of Burgos and of the clerics of Saint Mary of Castro Soret, diligently heard the matters that the proctors themselves wished to propose, nevertheless, because the proctor of the said bishop proposed that he still wished to speak against the persons of the witnesses produced in the principal cause, *likewise protesting that, for certain reasons, the attestations of the other party, which are said to have been received while the see of Burgos was vacant, were of no moment, since the question itself could not be terminated by you, although the other party urgently sought a sentence. Therefore, remitting it to you with the consent of the parties, we* command your discretion to receive the witnesses whom the parties should determine to produce against the persons of those produced concerning the principal matter. If the other party or both parties should wish in turn to disqualify them, you shall take care to admit proofs against them in such a way that thereafter the parties shall not be permitted to aspire to the disqualification of witnesses, lest, if permission be granted to the parties to produce fourth witnesses against the third, and so forth, it should happen that the matter, *already long protracted,* be protracted still longer.

Chapter L

Latin source headnote: Attestations received by an arbiter create faith in a judgment if the witnesses are dead; if they are alive, it is at the option of the person against whom the witnesses

were produced whether he wishes to receive the attestations or to have the witnesses depose anew. And add: even if the attestations have been published. And this last point is not in the final law of the Code, under the same title, where the case of this decretal is set forth.

The same, to the Provost and Masters G. and R., Canons of Laon.

The petition presented to us by *Garaud,* Archdeacon of Soissons, contained that, when a question was being conducted between R., his late predecessor, on one side, and the chapter of Saint Peter of Soissons on the other, concerning the jurisdiction that the same archdeacon proposed that he had in the said church by reason of the archdeaconry, at length *by the counsel of good men they elected Bernard,* Chancellor of Paris, and Masters R. of Reims and P. the Breton, canons, as arbiters concerning this. When, after assuming the arbitration, they had proceeded so far in the *aforesaid* matter that, the witnesses having been produced and *their* depositions published, the allegations of both parties having been received, and all the acts having been reduced to writing *and* marked by the impression of their seals, they ought to pronounce the award, *while they were deferring it at the pleasure of their own will,* one of them entered upon the way of all flesh, and another *was* appointed Archbishop of Embrun, who is distant from them by twelve days' journeys and more. Hence, since the arbitration appears to have expired because the aforesaid R. alone was wholly unable to arbitrate, *he humbly supplicated us that we should deign to write to discreet men who ought to proceed to the decision of the cause according to the aforesaid acts. Therefore* we command your discretion that, *if it is so,* you shall terminate *the cause itself* with its due end according to acts of this kind, *the obstacle of appeal removed;* nevertheless reserving to *the same* chapter *according to the laws* the option either to receive the depositions of those of the witnesses produced against them who survive, or, rejecting them, to consent that the same witnesses be admitted again, yet saving *the* right that in either case belongs to the same chapter, both against the persons of the witnesses and against their statements.

Chapter LI

Latin source headnote: Faith is not given to a witness, even a religious, who deposes without an oath.

The same, to the Bishop of Penne.

Recently it became known to us upon the supplication of the priest A. that, since he had entered the Order of Friars Minor for the purpose of trial *and thereafter, no profession having been made, had left within a year, we should deign mercifully to provide concerning this; we commanded you that, if the matter stood thus, you should declare that he was not bound to regular observance. Therefore, when the said priest and Brother John, custos of the Friars Minor in your parts, together with certain others, were established in your presence on this account, the said* custos, in order to prove that the same priest had made profession, introduced certain witnesses of his order, who deposed concerning this, without being sworn, while the said priest contradicted. *Hence the aforesaid priest asserted that their testimony was null, while the aforesaid custos replied that according to the rule of his order they could not and ought not to swear, but that in matters of this kind one was to stand by their simple words; wherefore you humbly supplicated us that through our letters we should render you certain of what ought to be done. We therefore briefly* respond to your fraternity that the testimony of no one, however religious he may be, ought to be believed to the prejudice of another unless he has deposed under oath. [*Given at the Lateran, on the Kalends of March, 1225.*]

Chapter LII

Latin source headnote: Witnesses are to be examined diligently and separately. Supply: even if the matter concerns the life and miracles of someone to be canonized. Abbas.

The same, to the Bishops of Quimper and Tréguier.

When our venerable brother the Bishop and *our beloved sons* the chapter of Quimper, and all the abbots assembled at Cîteaux in general chapter, *and many other bishops and religious, together with the abbot and convent of the Monastery of Saint Maurice of the Cistercian Order in the Diocese of Quimper, formerly intimated to us that, by divine gift, Maurice, of pious memory, abbot of the aforesaid monastery, was resplendent with illustrious miracles, so much so that the monastery itself, by a certain usurpation of usage, or rather by a certain anticipation of what was to come, has taken its designation from his name, and humbly supplicated that we should cause him to be numbered in the catalogue of the saints, so that what the people now usurp by devout presumption, as we have said, or even anticipate by divine prompting—calling him a saint and venerating him without the authority of the Apostolic See—they may at length do duly by apostolic command, to the glory of Christ and of the Christian name, we, assenting to their devout prayers insofar as was fitting, commanded through our letters our venerable brother the Bishop of Saint-Pol-de-Léon and our beloved son the Abbot of Saint Leo in the Diocese of Quimper that they should most diligently inquire into the truth concerning the life and miracles of the aforesaid man and faithfully intimate it to us, so that, when it had been fully ascertained, we might more fully be able to assent to the pious desire of the supplicants. The same bishop and abbot transmitted to us a certain document secured by the appending of their own seals, in which indeed many and great miracles are contained, performed, as is said, by the Lord through the merits of the said man; although they are found to have been proved through witnesses sworn and named in the document itself, nevertheless it does not appear from the often-mentioned document that they examined the witnesses themselves separately, or that they interrogated them concerning those things about which they testified and the circumstances thereof with that diligence which is customarily and ought to be employed in the reception of witnesses. Hence, although human devotion ought with ready affection to honor those whom the condescension of divine goodness honors, nevertheless we have judged it safer to defer this matter than to pronounce a sentence in it with insufficient consideration. Yet, unwilling to fail the gift of heavenly grace, but wishing to assist it,* we command your discretion that you shall take care to examine separately, with that diligence which is customarily and ought to be employed in the reception of witnesses, the witnesses whom the abbot and monks of Saint Martin of the Cistercian Order shall determine to produce concerning the life and miracles of M., of pious memory, abbot of the aforesaid monastery. [*Given on the Kalends of September, 1225.*]

Chapter LIII

Latin source headnote: A witness who has deposed obscurely is to be examined again. You supply: by the office of the judge.

Gregory IX.

When a strong outcry had ascended against the Bishop of Acerenza concerning simony and other crimes, we commanded the Bishops of Melfi and Ruvo that they should inquire diligently into the truth concerning them. (*And below:*) But because, after the attestations were opened, L. and G. deposed concerning simony so confusedly that the truth cannot be made clear from their statements, we command that you shall diligently examine them again, and faithfully report to us under your seals the matters testified by them and by the others whom you shall receive.

Chapter LIV

Latin source headnote: One persisting in a crime is repelled from testimony even in a civil cause; but one reformed, if not infamous, is admitted in a civil cause, and even in a criminal cause pursued civilly. It is otherwise in the case of a perjurer, who is repelled in a criminal cause.

The same.

The testimony of one against whom a crime is objected by the adverse party is deservedly disqualified in a criminal cause, or in a civil cause if he persists in the crime itself. But if he is both reformed from the crime and is not accompanied by infamy, he is not to be repelled in a civil cause, or even when a crime is pursued civilly, except on account of the guilt of perjury. In a criminal cause, however, if, upon an accusation instituted against him in another judgment, he has been convicted of or confessed the crime, or if he is now convicted of it by way of exception, or if his reputation has been burdened because at some time he was repelled in such a manner, although in this case he would not be excluded in a civil cause, he can be removed from testimony even if he has done penance.

Chapter LV

Latin source headnote: A fourth production is not to be granted without the legal solemnity described here.

The same.

After a third production, witnesses ought not to be produced further in a cause unless an oath has been furnished by the person who petitions this, that neither by himself nor through another has he withdrawn matters testified or made inquiry into them, nor does he seek a fourth production through any fraud or artifice, but because he was previously unable to have those whom he desires to produce anew.

Chapter LVI

Latin source headnote: A person criminally accused is not admitted as a witness against another in a criminal cause while his own accusation is pending, except in excepted crimes.

The same.

No one ought to be admitted to give testimony in criminal matters, except perhaps in excepted crimes, while an accusation of crime against him is pending, since accused persons also are repelled from accusation and from the reception of orders unless they first prove themselves innocent.

Title XXI: On Witnesses Being Compelled or Not

Chapter I

Latin source headnote: In a civil cause witnesses are to be admonished and induced to testify, and, if they withdraw themselves because of hatred, favor, etc., they are to be compelled.

Alexander III, to the Bishop-elect of Pavia.

We have committed for termination by judges the matrimonial cause that is being conducted between the woman M. and the son of R. *Cane, which was brought by appeal from your examination to our*

hearing. Therefore, *by commanding through apostolic writings,* we order your fraternity that you shall diligently admonish and induce the witnesses invoked by either of the parties in testimony of its assertion, lest they conceal the truth. But if *you see that* they withdraw themselves because of hatred, favor, or fear, *lest the truth be concealed,* you shall compel them by ecclesiastical coercion to give testimony before the aforesaid judges, or before their messenger whom they shall send for this purpose.

Chapter II

Latin source headnote: Where testimony is necessary, witnesses are to be compelled to give it, even by a sentence of suspension, excommunication, and deposition.

The same, to the Priests of Ponza.

Since your testimony is necessary concerning the cause that is being conducted between *our venerable brother* the Bishop of Palestrina and *our beloved son* the Abbot of Subiaco, *lest anything contrary to truth should occur, by the authority of the present letters we* command you that *on the Wednesday of the immediately following week,* in order to give testimony to the truth, you shall present yourselves before the apostolic presence, *every occasion and excuse ceasing*. But if *then* you do not come, know that by apostolic authority you are suspended from ecclesiastical office and benefice; and, if you do not come even thus, you will be able to fear a sentence of excommunication and deposition.

Chapter III

Latin source headnote: A witness who withdraws himself through fear of the adverse party is compelled to testify; add: even in a criminal cause, according to the common understanding, and thus something is added to chapter 1 above, under the same title, and to the chapter *Dilectorum* below, under the same title.

The same, to the Archbishop of Genoa.

Concerning that *of which you desire to be made certain—whether, when someone is convened before a judge concerning some manifest deed, those who were present at the deed are to be compelled to give testimony to the truth* — we respond to your consultation in this way: if the deed is notorious, it does not need to be made clear by the depositions of witnesses, since such matters, *as your discretion is not unaware,* do not require proof or judicial order. But if it is not notorious and the person who is convened has denied the deed, the witnesses who were present at the deed, *according to the custom of the Roman Church,* are to be admonished, not compelled, to give testimony to the truth—unless perhaps it has been established to the judge that they are recalled from giving testimony by fear of the adverse party—although *perhaps* they may generally be compelled to this according to the rigor of human law. [*But if a priest, etc.* (*cf. c. 5, On the Competent Forum, II.2.*)]

Chapter IV

Latin source headnote: Even in a criminal cause, witnesses whom the accused maliciously withdrew from the accuser are compelled. This it says according to the true and common understanding. Abbas.

The same.

It has reached our hearing that, when I., Prior of Saint Lawrence, had been accused before you of the crime of simony and adultery, he *induced and* bound by oath a certain person who was to be led as a witness against him not to depose against him. *Therefore you doubt in what manner one must proceed against the defendant, or whether the aforesaid witness is to be compelled to the assertion of the truth.* We therefore, considering that no one ought to withdraw from an adversary instruments, under the appellation of which witnesses are contained, and that both he who steals instruments and he who withdraws from an adversary an equal opportunity for advocacy *or defense* shows that an inequitable suit is fostered by him, and ought to experience in himself the authority of the judge that he has mocked, *by the authority of the present letters* [*thus*] respond *to you* that the witness himself is deservedly to be compelled in order to uncover the contrivance of so great a fraud and cunning.

Chapter V

Latin source headnote: If the matter cannot be proved otherwise, witnesses are to be compelled even in a criminal cause. This it says according to the more notable reading.

Clement III, to the Bishop of Segovia.

It has reached us that, when *in your episcopate it often happens that* an enormous and intolerable injury is inflicted by laymen upon a cleric in the presence and sight of many, [*or that, while the people are present in church, human blood is horribly shed at the instigation of diabolical fraud,*] *and on this account* those inflicting the injury, when drawn into a cause, deny that they committed so great a crime. And when the injured person desires to prove this by the testimony of those who were present *and saw it,* they, *although they know the truth,* are unwilling to bear testimony to the truth. *And thus it happens that ecclesiastical justice perishes and the clerical order becomes vile.* [*It also happens that, when several persons frequently lay violent hands rashly upon clerics, they are unable, because of very many obstacles, to labor their way to the Apostolic See. And*] *because your fraternity was led to consult us concerning these matters,* we respond to your consultation in this way: those who refuse to testify concerning ecclesiastical affairs, if the truth cannot otherwise be elicited, are to be compelled to do so through ecclesiastical censure. *But if clerics who have suffered injury are unable* [*perhaps*] *to prove the truth by the testimony of others, although according to the rigor of the canons one ought not to stand by the testimony of one, nevertheless, according to the custom of the Roman Church, on account of reverence for the clerical order, we will that faith be given to their oath.* [*But those, etc.* (*cf. c. 17, On the Sentence of Excommunication, V.39.*)]

Chapter VI

Latin source headnote: Witnesses are to be compelled concerning the proof of consanguinity. Thus it is commonly summarized. But Panormitanus is not pleased by this summary and therefore summarizes it as chapter 1 above, under the same title.

The same.

Moreover, it is not doubted by us that a witness is to be compelled to bear testimony to the truth concerning consanguinity, since both written law approves this and custom approved by the acts of those employing it, *so that,* if it has been established that he suppresses the truth through hatred or favor, *or fear, he is to be compelled to confess completely what is true.*

Chapter VII

Latin source headnote: A synodal witness who has deposed concerning a marriage before the ordinary is not compelled to swear concerning it before a delegate; this is the first point. Because of supervening infamy he is repelled from testimony; this is the second. He can nevertheless, if he has erred, correct his statement immediately, but not after an interval. This is the third.

Celestine III.

Furthermore, if public witnesses whom your city calls synodal have once rendered testimony concerning a matrimonial cause before you or your chapter, they ought not to be compelled to furnish an oath again concerning the same cause in the presence of any delegated judge, provided that faith is otherwise made for the delegated judge, unless perhaps the article of a new question should arise. Witnesses of this kind, however, can by public law be removed from giving testimony because of infamy, if it should happen that they have *publicly* contracted it after they were received in common. Their testimonies, if at any time they have erred—not, however, deliberately, but in *the very act of* uttering them—and have corrected themselves immediately, ought not to be disqualified; but it will be otherwise if they have interposed an interval before their correction.

Chapter VIII

Latin source headnote: When inquiry is made concerning reputation or the vice of falsity, witnesses are to be compelled. This it says according to Johannes Andreae, but according to Panormitanus it restricts the text too greatly.

Innocent III, to the Prior of Saint Fridianus and Master P., Canon of Pisa.

Concerning these matters—(*And below:* [*cf. c. 16, On Accusations, V.1.*]) Moreover, we will and *by the authority of the present letters* command you that, concerning the articles of the inquiry, both concerning the reputation of the bishop-elect and concerning the letters sent against him in the name of by far the greater and sounder part of the chapter, you shall compel the witnesses who shall have been named to bear testimony to the truth. [*Given at the Lateran, on the third day before the Ides of February, in the fifth year of our pontificate, 1203.*]

Chapter IX

Latin source headnote: Witnesses who withdraw themselves are to be compelled even in a criminal cause.

The same, to the Archdeacon of Milan.

When we directed our writings to you against Master R. *of Arca Mariana in the Diocese of Novara* concerning the fact that he is said to have brought back false letters from the Apostolic See and to have used them by himself or through a proctor, you petitioned to be instructed by the oracle of the Apostolic See whether you ought to compel the witnesses named concerning the aforesaid vice of falsity. We therefore *briefly* respond *to your fraternity* that, if the aforesaid witnesses withdraw themselves because of favor, hatred, or fear, you ought, appeal removed, to compel them through ecclesiastical censure to bear testimony to the truth.

Chapter X

Latin source headnote: It is not summarized because of the variety of readings, nor is it divided.

Honorius III, to the Abbot of Saint Eugenius and Master G., Canon of Siena.

When the proctors of the beloved sons, the chapter of Volterra, on one side, and of *our venerable brother,* the Bishop of Volterra, on the other, were established in our presence, *we granted our beloved son, the cardinal deacon of the title of Saints Cosmas and Damian, as auditor; before him, when through complaint and countercomplaint issue had lawfully been joined concerning the several chapters that we transmit to you enclosed under our bull, etc.* (*And below:*) Moreover, as to the witnesses who shall have been named, except concerning crimes, if they withdraw themselves because of favor, hatred, or fear, you shall, *appeal ceasing,* compel them through ecclesiastical censure to bear testimony to the truth.

Chapter XI

Latin source headnote: To uncover the truth of a conspiracy, the associates are compelled, even though bound by oath.

The same, to the Bishop of Bologna and Master B.

Our venerable brother the Archbishop of Ravenna proposed *before us* that the citizens of Cervia, together with M. and I., former clerics of the church of Ravenna, presumed to make a certain conspiracy against him, likewise giving them a certain quantity of money to his detriment and binding themselves by the bond of an oath to conceal these matters. Hence *the same archbishop* humbly supplicated *us* that, since we determined to commit the cause concerning these matters and certain articles to you *for his sake,* and he cannot prove his intention except by the testimony of the aforesaid citizens, *we should* deign *to* provide for him *concerning this,* lest his justice perish for lack of witnesses. Therefore *we* command *your discretion* that, admonition having been given beforehand, you shall, through ecclesiastical censure and with appeal removed, compel those whom you see ought to be compelled to absolve *those* whom the same archbishop shall lead to be produced as witnesses from an oath of this kind; likewise compelling them, if they withdraw themselves because of favor, hatred, or fear, by similar coercion to bear testimony to the truth.

Title XXII: On the Credibility of Instruments

Chapter I

Latin source headnote: A copy of an instrument not taken with solemn formality does not create faith without the original. This it says according to its meaning.

Gregory.

If we do not see the authentic writing, we can do nothing upon the copies. [*But to the Florentine, etc.*]

Chapter II

Latin source headnote: An instrument falls if the subscribed witnesses have died, unless it has an authentic seal or was drawn up by a notary.

Alexander III.

Authentic writings, indeed, if the subscribed witnesses have died, unless *perhaps* they were made by a public hand in such a way that they appear public, or have an authentic seal by which they can be proved, do not appear to us to possess the strength of any firmness.

Chapter III

Latin source headnote: An apostolic rescript is not judged defective because of an erasure in a place not open to suspicion. This it says according to its meaning.

The same.

We have *clearly* learned from your letters that, when you undertook by our mandate to terminate the cause being conducted between Master A. *of Hillesdale* and R. *of Haute Rive* concerning the chapel of Ambitoria, *and caused our letters to be read in a public hearing,* the aforesaid R. petitioned that a copy of the letters be made for him. When, *after diligently inspecting the letters,* he accused them of falsity, *for this reason, namely,* that they were erased in the narrative of the fact where "parochial rights" is written, [*asserting that he would prove in our presence that such letters had not emanated from our chancery; but you, seeing that the form of the letters deviated in no respect from the path of reason, were unwilling to desist from the execution of the cause, tendering to the aforesaid R. an oath that he had not alleged this for the purpose of evasion or delay, but because he believed it to be so. The oath, however, not having been furnished on the appointed day, you adjudged that the aforementioned H. be placed in possession for the purpose of preserving the thing; and because a certain lay servant of the same R. resisted your judgment, he was excommunicated and excluded from the church under interdict. The aforesaid R., approaching us and concealing, as is said, that appeal had been prohibited in the commission, and making no mention of the erasure of the letters, or of the oath tendered to him and not furnished, or of the sentence placing [H.] in possession for the purpose of preserving the thing, obtained letters to the Bishops of London and Norwich in this form: that, if anything had been done to the prejudice of the aforementioned R. by occasion of the former commission, it should be recalled as void by our authority. And when the aforesaid H., cited by the Bishop of Norwich, who was discharging his own office and that of the Bishop of London, said before him that the letters had been obtained with the truth suppressed, fearing that the sentence would be executed and holding the Bishop of Norwich suspect—since the aforesaid R. was joined to him by great familiarity, as one who was the nephew of the Bishop of London and is said to eat his bread daily—he appealed to us. Hence, because one's own fraud ought to benefit no one or furnish protection,*] *we, inspecting our letters,* say that they cannot be judged false because of that erasure, nor even held suspect, especially since privileges may be erased in [the descriptions of] possessions, and letters may without hesitation be erased in the narrative of fact if an error has been made.

Chapter IV

Latin source headnote: For one who challenges a privilege as false, the judge shall cause it to be exhibited before the judge and a few persons, in a suitable and secure place; and in the meantime the sentence rendered through it shall be observed.

The same, to the Archbishop of York.

We have received the letters that *our beloved son R.,* Abbot of Saint Augustine, sent against *our venerable brother* the Archbishop of Canterbury, *legate of the Apostolic See.* (*And below:*) *We therefore, considering that the time prescribed for prosecuting the appeal is by no means to be awaited,* since privileges that have not been inspected cannot be accused of falsity, and it is difficult and dangerous for them to be exhibited at the

Apostolic See, command, [*by the common counsel of our brothers,*] that either *the privileges* be exhibited to the same archbishop in the cloister of the aforesaid brothers, or in another place suitable *to them* and secure *for him, according to your judgment,* by the next feast of the Nativity of Saint John the Baptist. [*We do not, however, will that all be exhibited together; but, when one has been exhibited and an opportunity to inspect and copy it, if necessary, has been furnished to them, let it be returned to the brothers themselves and another presented. Then, by the feast of the Purification of the Blessed Mary in the following year, the archbishop, sufficiently instructed to challenge the aforesaid privileges, shall approach the Apostolic See by himself or through a sufficient representative.*] But if he shall neither come nor send a sufficient representative, you shall impose perpetual silence upon him *and his successors* from challenging those [*privileges*] further. Meanwhile, however, we do not will those privileges to waver, but command that the sentence rendered in reliance upon them concerning the status of the monastery be inviolably observed. [*We also command that a sentence against the clerics of the same monastery or its churches be publicly declared not to bind, appeal removed. And those who prohibited obedience to or reception of the apostolic letters, having been suspended, shall be compelled to labor their way to the Apostolic See. Therefore, because the more we trust in your prudence and integrity, the more studiously and faithfully it befits you to examine the matter committed to your experience, we order and command your discretion that, every favor and fear set aside and the evasion of appeal removed, you shall proceed in the fact according to the form that we have prescribed; and on the prescribed feast of the Purification you shall transmit to us, enclosed under your seals, the transcripts of the privileges that shall have been exhibited to you, together with your letters containing the truth of the matter. But lest contention arise from the multitude,*] we also order that you shall cause the archbishop to be content with the number of twelve persons in the inspection of the privileges. *Any sentence that you find to have been pronounced against the clerics and churches of the monastery after the appeal was interposed, you shall also publicly declare not to bind, notwithstanding any appeal.*

Chapter V

Latin source headnote: An instrument or privilege that someone uses before a judge ought not to be read in full to the adversary, but only the chapter at issue ought to be produced.

Celestine III, to the Abbot of Saint Secundus.

It happens sometimes, as you say, that whenever you have litigation *in causes* with someone and are compelled to exhibit your privilege more fully to the adverse party, it results that *perhaps,* by occasion of the one chapter concerning which you are convened, very many disputes are stirred up, *and thus rivals receive grounds for many cavils by which they assail your peace and tranquillity. Therefore, because it is our concern to oppose disputes that may be stirred up and to decide those already stirred up,* we respond *to your consultation, since you proposed concerning this,* in this way, *and we will* that, whenever you shall have been required to exhibit a privilege, indulgence, or instrument, in the presence of the judge or of certain prudent men appointed by the *judge himself,* while the contrary party hears, it shall only be recited in such a way that *the privilege is in no manner handed over for transcription; but* if there is a question concerning only one chapter *of the privilege,* that *chapter* alone shall be copied, and a copy thereof shall be made for the adverse party.

Chapter VI

Latin source headnote: An instrument not drawn up by a public hand, bearing a seal whose letters are not legible or whose writing is erased, or which suffers an enormous fracture, does not prove.

This it says insofar as it pertains more closely to the title. And it is an everyday and notable case concerning those ancient seals. Panormitanus.

Innocent III, to the Archbishop of Milan.

Between the beloved sons G., Abbot of Saint Donatus of Scozula, *on one side in the name of the monastery,* and *W.* B., *Canon of Milan,* your proctor *on the other in the name of the Archbishopric of Milan,* litigation was conducted for a long time in our auditorium concerning the articles set forth below. For the *said* abbot, in the name of his monastery, sought from your aforesaid proctor, in the name of the Church of Milan, restitution to the aforementioned monastery of the port of Scozula *or Sesto,* together with the lordship, district, and jurisdiction of the aforesaid place *and castellany,* saying that all these belonged to the monastery; and he said the same concerning the people who dwell in the court of Beruno and hold property of the *aforementioned* monastery, *namely,* in Gralia, *Carpuneno, Vesterpeno, Cadempleno, and Baveno* [*and Isola Superiore, Belgirate, and Lesa. He also sought that the Archbishop of Milan cease from troubling the people who dwell in the place of Baveno*] *concerning a manse of the court,* respecting whom the monastery had prevailed in a possessory judgment by the sentence of the Bishop of Verona. [*Likewise, that he cease from troubling the vicars, that is, the communes and lands situated in the territory of Sesto or Scozula and in its castellany, and also from troubling the lodging-service of the aforesaid place of Scozula or Sesto and also of that castellany. Again, that he not trouble the aforesaid monastery in possession or quasi-possession of the fishery of the whole water of the Ticino as far as the ravine of Castelletto or Pigarolo. And*] he sought all these things together with all fruits received from them, saving in all things the right to add or diminish, striving *in many ways* to prove that all the foregoing belonged to his monastery. First, through the privilege of Count Luitard, formerly Bishop of Lucca, who had founded the monastery itself and had given it all the foregoing. Second, through the instrument of the sentence of Aspert, formerly Archbishop of Milan, which he rendered concerning these matters by delegation of Emperor Louis, for the *often-mentioned* monastery against A., nephew of the aforesaid Luitard, who was troubling the monastery concerning them. Third, through the privileges of the Roman emperors, and especially of Henry, who confirmed or even conferred all the foregoing upon the monastery. Fourth, through the instruments of leases that the abbots of the aforementioned monastery had made to various persons. He had also produced witnesses through whom he endeavored to prove that the monastery, for the last sixty years and within, and for fifty years and more, *had held and* possessed *all* the foregoing, and that it was public report that they had all been donated to the aforesaid monastery by the already-mentioned Luitard.

But many objections were made by your proctor against the privilege of donation. First, because it appeared to be consumed most of all at the very point, namely in the notation of the indiction, where falsity could more easily have been detected. Second, because, although the charter appeared most ancient, the writing appeared more recent, as though it had not been made at that time. Third, because a false seal appeared to have been defectively affixed, in that on one half of the seal a certain image appeared, not with a miter on its head but with a cap, and not clothed in pontifical but in royal vestments, holding in its hand not a pastoral staff but something like a royal scepter; its face did not appear whole but half, as though on that half it looked toward another half-image, although that other half remained entirely empty. But a certain image appeared to have been erased from it, because the wax in that part appeared similar to the remaining part neither in color nor in flatness. Hence it appeared to have been the seal not of a bishop but of an emperor, because on one half it portrayed the

image of Caesar and on the other half it was presumed to have borne the image either of his son or of his wife. For on the seal itself no other letters appeared except those that designated the proper name together with this addition, "By the grace of God." But since the proper name of the bishop himself had been Luitard, two letters had been erased in the proper name expressed by the seal: the second, which was between "I" and "t," and the sixth, which had been between "r" and "v," so that, if the second *had been* "o" and the sixth had been "i," without doubt it would read not Luitardus but Lotharius. This could also be proved from the fact that, according to the disposition of the other letters, between "I" and "t" there was space sufficient to contain only one letter, although according to the completeness of the name Luitardus there are two different letters between "I" and "t." Moreover, between "r" and "v" there was so little space that the letter "d," which occupies greater space, did not appear to have been formed there, but rather the letter "i," which occupies the least. Again, although the wax of the seal on the inner side was most ancient, the wax placed on the outer side, as if for preservation of the seal, was fresh and soft. When this had been diligently investigated, it was ascertained with the greatest certainty that the charter had been perforated beneath the ancient seal and, through the adhesive of the new wax placed on the outside as if for preservation of the seal, it was defectively joined to the charter itself. By the same kind of falsity, namely through defective affixing of a seal, nearly all the other privileges of the Roman emperors, except the privilege of Henry, were found either false or falsified.

But even Henry's privilege itself did not appear sufficient for establishing faith, because it had neither been drawn up by a public hand nor did it have an authentic seal, in that it was consumed over almost one half and no more of the proper name appeared than its latter half, namely "icus," nor of the other letters except this addition, "By the grace of God," so that from the letters themselves it could no more be proved to have been the seal of Henry than of Louis. The instrument of the sentence was also found suspect in many ways, both because certain erasures appeared in it and because the subscription of the notary appeared to be by a different hand than the writing of the instrument, although the notary professed in the subscription that he had written the instrument with his own hand. The writing also appeared more recent than the charter, and the ink appeared to have been stained with water so that it might appear older. Moreover, in all the imperial privileges that were later, no mention *at all* was made of that sentence, although in some of them mention was made of Luitard, who was said to have made the donation.

Furthermore, if the instrument of the sentence were *true and* lawful, nevertheless no prejudice could be generated against the Archbishopric of Milan through that sentence, since the sentence itself had been rendered between other persons, and a matter transacted between some persons does not prejudice another. Nor could the attestations contained in the instrument of the sentence, by which the lawful donation of Luitard appeared to have been proved, inflict any injury upon the same archbishopric, since they had been received between other persons and in another judgment.

Moreover, the aforementioned privilege of Henry appeared to have been not only one of confirmation but also one of donation, whence perhaps the ownership of the things donated could be understood to have been acquired *and delivered* to the monastery. Yet, although from the form of the petition declared in the privilege itself *and from certain other words placed in it* it appeared *to have been only* confirmatory, nevertheless, so that it may be understood in the manner in which it could have greater effect, it appeared *certainly* necessary to distinguish that the same Henry donated some things and

confirmed others, since the same things could not lawfully *both* be confirmed and donated at the same time: confirmed, as things previously had and possessed; donated, as things then delivered and granted. *He donated, I say, those things that he granted to the monastery within the space of three miles; but he confirmed those things that had previously been granted and donated to the monastery itself, among which were contained those brought into judgment.* And on this account those things could not be understood to have been donated through that privilege, but confirmed, since according to the sanctions of the laws that which is mine cannot become mine by another cause unless it has ceased to be mine; *especially since the party of the monastery endeavored to prove, both through the privilege of grant and through the instrument of the sentence, that those things had lawfully been donated by Luitard, and throughout the whole judgment it relied upon that donation; whence after a donation of this kind the same things could not be donated again to the same party.* Therefore, since Henry's privilege was only confirmatory, at least as to those things brought into judgment, if the principal did not hold, neither did the accessory, which is known to have followed from it or on account of it. *In the same way, the other privileges of the Roman emperors, even if they had been true and without suspicion, would nevertheless be proved invalid for proof.* Through the instruments of lease, indeed, neither ownership nor *even* full possession is proved, since *according to the lawful sanctions* a lease made is not sufficient for proof or defense of one's own property.

[*Although in these and other ways your often-mentioned proctor appeared to refute the intention of the abbot, and it is provided in civil law that, when the claimant does not prove, the person convened shall prevail even if he has furnished nothing, nevertheless, in order to show more clearly the justice of your party, he appeared to prove through witnesses that the Archbishop of Milan had possessed undisturbed for the last sixty years all the foregoing. But against prescription of this kind the said abbot objected both civil and natural interruption in the intervening time. For formerly, when Gozovio, once a count, had been delegated as judge concerning these matters by Emperor Frederick, because after lawful citations the Archbishop of Milan had contumaciously absented himself, a sentence was rendered for the monastery, and corporal possession was assigned in its name; the abbot asserted that, after it had been held for six years and more, it was lost in the war of the Milanese. Through this he alleged that prescription was interrupted civilly and naturally. But your often-mentioned proctor replied to the foregoing exception in this way: John of Anagni, of good memory, cardinal deacon of Saint Mary in Portico, afterward cardinal priest of Saint Mark and finally Bishop of Palestrina, then legate of the Apostolic See, observing with what barbaric ferocity and insatiable hatred Emperor Frederick wished utterly to overthrow the church and city of Milan and reduce them to the lowest servitude, recalled as void whatever he or any judge or ministerial of his had ordained at that time against the churches, clerics, or citizens of Milan. Our predecessor Pope Alexander, of happy memory, approving his act, confirmed it; whence what had been done by the aforesaid count in hatred of the Milanese, whom the said emperor was persecuting more bitterly, could not for the foregoing reason generate prejudice against the Church of Milan. But the adverse party considered reasoning of this kind frivolous, since completed matters cannot be made uncompleted by any constitution of law.*]

When litigation had therefore been conducted for a rather long time concerning *the matters that we have set forth in our presence and that of our brothers,* because *the things* that were sought had not been lawfully proved to belong to the monastery, *by the common counsel of our brothers* we determined by sentence that *your aforesaid* proctor, in your name and that of the Church of Milan, should be absolved from its claim, since, when the rights of the parties are obscure, it is customary for judgment to be rendered against the person who is claimant. [*But concerning the manse, etc. Given at the Lateran, on the sixteenth day before the Kalends of May, 1199.*]

Chapter VII

Latin source headnote: Letters concerning absolution from a vow obtained by crusaders with the truth suppressed or falsity expressed are not valid.

The same, to the Archbishop of Canterbury.

Concerning what—(*And below:* [*cf. c. 8, On a Vow, III.34.*]) *You asked, moreover,* what you ought to do concerning crusaders who, saying that they are returning from the Apostolic See, bring back unknown seals of cardinals concerning their absolution, although they should not lightly have been believed concerning the impediments alleged. To this we respond to you that, *when we* at any time grant *apostolic* letters to such persons, we write in this manner to those who know their persons and resources more fully: that, after the truth concerning the impediments alleged has been more diligently investigated, they shall ordain concerning them what they shall know to be more expedient for the salvation of souls and the relief of the Holy Land, providing attentively, *as is contained above,* lest anything be deceitfully fabricated in fraud of the vow. Hence, if it has been established that such persons obtained, through suppression of the truth or expression of falsity, letters not only of the cardinals but also our own, and not only doubtful but even certain letters, we will them to be without what was obtained and, notwithstanding those letters, *command, appeal removed, as is expressed above,* that they be compelled to execution *or redemption* of the vow.

Chapter VIII

Latin source headnote: If there is doubt whether an *extravagans* is an authentic decretal, either it accords with the law, and then judgment is rendered according to it, or it conflicts with the law, and then the Pope is consulted.

The same, to the Bishop of Ely.

The pastoral—(*And below:* [*cf. c. 28, On the Office of a Delegated Judge, I.29.*]) *You also asked by what indications faith is to be given to decretals concerning whose authority a judge can not undeservedly doubt, since many are found in the compilation of scholars and alleged in causes, concerning which authenticity by bull has not been established, nor were they themselves published through the metropolitan sees. Therefore, because it often happens that decretals of this kind are proposed even before us which we doubt to be authentic, responding benignly to your fraternity,* we have determined by authority of the present letters to establish that, when some decretal concerning which a judge deservedly doubts is alleged, if it accords with the common law, he shall not fear to judge according to it, since he appears to proceed not so much by its authority as by the authority of the common law. But if it conflicts with the common law, he shall not judge according to it, but shall consult his superior concerning it. [*Moreover, because, etc.* (*cf. c. 4, On Exceptions, II.25.*) *Given at Rome at Saint Peter's, on the fourteenth day before the Kalends of January, 1204.*]

Chapter IX

Latin source headnote: After the attestations have been published, instruments can be produced until conclusion. This is the first point. The custom of a place makes an instrument authentic. This is the second.

The same, to the Bishop of Saint Andrews and the Abbot of Broch.

When the beloved—(*And below:* [*cf. c. 6, On Arbiters, I.43.*]) *Moreover,* we have determined to respond to the second question *in this way:* either party can exhibit instruments even after publication of the attestations, up to the casting of the definitive sentence, before the cause has been concluded. But concerning the third article *we respond in this way:* you shall *inquire more diligently into the truth, and,* if the approved custom of that country obtains that faith is given *in such matters* to the instruments of that king, you will be able to admit them safely, especially since the aforesaid king was of such integrity that his instruments are of the greatest authority in the regions of Scotland. [*To the fourth, etc.* (*cf. c. 6, On the Cause of Possession, II.12.*) *Given at the Lateran, on the sixteenth day before the Kalends of April, in the tenth year, 1207.*]

Chapter X

Latin source headnote: The falsity of an instrument, or what is lacking in an instrument, can be proved through witnesses.

The same, to Peter, a Citizen of Viterbo.

When John the Hermit had sought from you one hundred and thirty Sienese pounds by reason of a loan before Donadeus and John, judges of Viterbo, and you proposed in opposition that, since the same *John* was bound to you for one hundred and eighty pounds as the price of a house that you had sold to him, the one hundred and thirty pounds from them ought not undeservedly to be set off *against the loan,* at length, after litigation had been conducted between you for some time concerning this and certain other articles, *the same* judges, *having understood the arguments of both parties and diligently inspected* the attestations *and* published *instruments,* condemned you by sentence to deliver to the same *John* vacant possession of the aforesaid house, *and* freed from creditors. (*And below:*)

Therefore, when you determined to appeal from this sentence to our hearing, and we appointed *our beloved son* T., our subdeacon and chaplain, as auditor both for you and for the aforesaid John, it was proposed *before him* on your behalf that the sale of the aforesaid house had been not pure but rather conditional, and that you were in no way bound to its delivery. Four witnesses were nevertheless introduced to prove this, because, even if it was a new chapter, it nevertheless depended upon the old; having been sworn, they deposed that they were present at the contract celebrated between you and the aforesaid John concerning the same house, *situated in the quarter of Saint Blaise,* for which a price of one hundred and eighty pounds had been fixed for you, with this condition added, namely, that you should inhabit the house itself freely during your life and, after your death, it should remain to M. and R., your children and the nephews of the same John. In consideration of this condition, you sold the house itself to the same John for a lower price, although you could have had two hundred pounds for it from G. Morandi; but the same witnesses said that they did not at all remember the year, month, and day on which the sale was made.

The said John, however, proposed that the *sale itself* had been not conditional but pure, exhibiting to prove this a public instrument [*drawn up in the year of the Lord's incarnation 1206, in the month of November, on the fourth day,*] *in which you professed that by your own will you had sold and delivered the house itself to the same John and afterward received the price of one hundred and eighty pounds.* He also introduced to prove it the notary who had drawn up the instrument and one of the witnesses subscribed in the instrument. *But although the notary affirmed that the sale had been pure, as is contained in the sequence of the*

instrument, [*and the witness also asserted that the sale had been made,*] *nevertheless, whether the contract had been entered into under a condition or purely, he said that he did not at all remember.*

Furthermore, when a doubt had arisen as to whose proof ought to prevail, it was proposed on your behalf that, although *according to the lawful sanctions* the credibility of instruments and the depositions of witnesses possess the same force in conducting litigation, nevertheless not every instrument ought to be of such moment that it is preferred to the depositions of three or more suitable witnesses. *For it is sufficient if, on account of the authority of the notary, who is presumed faithfully to fulfill his office since he is bound to this by oath, as much faith is given to the instrument drawn up as would be given to two suitable witnesses. But since it was manifestly proved through four witnesses superior to every exception that the aforesaid sale had been celebrated conditionally, you asserted that their depositions were deservedly to be preferred to the instrument.*

To this, however, the same John responded in opposition that, since he founded his intention through the already-mentioned instrument, *to which undoubted faith is to be given, since it is neither canceled, effaced, nor corrupted in any part of itself,* and you propose by way of exception that the sale itself was celebrated not purely but conditionally, and certain faith concerning the time was not made through the witnesses introduced by you for this purpose, and therefore it does not appear that they depose concerning that sale which, as is established by the said instrument, was contracted at a determinate time, proof of this kind appeared ineffective to refute the contrary intention. But you proposed that this response was invalid, because, when either party, interrogated by us, had confessed at law that only one sale had been contracted concerning the house, and it is clear from the depositions of the witnesses that the sale was conditional, it is gathered from the confession of both parties that the sale of the same house was conditional, not pure, notwithstanding that the interrogation itself was made after the cause had been concluded by the parties, since the judge, who ought to investigate all things up to the pronouncement of sentence, can interrogate concerning a fact whenever some matter of doubt occurs.

Therefore, these and other matters having been proposed both before us and before the said chaplain and more fully understood, by the counsel of our brothers we pronounced that the sale of the aforesaid house had been celebrated conditionally and that on this account you were in no way obligated to its delivery, imposing *perpetual* silence upon the aforementioned John concerning this. But the sentence of the aforesaid judges, who are known otherwise to have pronounced justly, since an exception of this kind was neither proved nor objected before them, we invalidate as to the said chapter, confirming it as to the other articles by apostolic authority.

Chapter XI

Latin source headnote: The absence of a letter does not invalidate a rescript.

Honorius III.

It was proposed *before us on behalf of our dearest daughter in Christ B., formerly Queen of the English, that, when the nobleman W. de Guerche and his accomplices of the Dioceses of Nantes, Rennes, and Angers despoiled her at their own pleasure of the castle of Segré, which belonged to her by reason of her dower, and she obtained letters concerning this against him from Pope I., our predecessor of good memory, directed to us,* because an apostolic rescript is asserted to be defective on the ground that in the word *spoliarunt* this character "o" was missing, *although three or four citations had already emanated from us, nevertheless, admitting frivolous*

exceptions of this kind, you deferred proceeding in the matter itself. We therefore, marveling not a little at your discretion, since from what precedes and follows the meaning can be understood, although through the fault or occupation of the scribe the aforesaid "o" was omitted, you could sufficiently have ascertained the intention of the mandator, nor had his mandate expired at his death because the matter was no longer untouched; and willing that an end be imposed upon litigation, through apostolic writings we command your discretion that, notwithstanding this, you shall proceed in the matter itself *according to the tenor of the former letters, with the obstacle of any contradiction and appeal removed,* reason going before. [*Given at the Lateran, on the fifteenth day before the Kalends of November, in the first year, 1216.*]

Chapter XII

Latin source headnote: An appeal is lawfully taken from a judge who does not cause common instruments to be produced for a party petitioning this.

Gregory IX, to the Prior of Saint Bartholomew and the Dean of Arches in London.

G., perpetual vicar of the church of Rechan., explained to us that, when the prior and convent of Leeds convened him concerning tithes before judges by apostolic authority, and the said G. reconvened them before the same judges concerning like matters, because the said judges did not cause a copy of certain common instruments—which the other party had and through which he intended to establish his intention concerning the principal matter—to be made for him although he petitioned this insistently, he appealed to our hearing. Therefore, we command that, if it is so, after [the matter] has been recalled to its due state, etc.

Chapter XIII

Latin source headnote: Contrary writings produced by the same person do not create faith.

The same.

It can be imputed to one who has produced in judgment writings contrary to one another, mutually derogating from their own credibility, since it was within his power not to produce whichever he wished.

Chapter XIV

Latin source headnote: If the cause is expressed in an instrument of debt, the debtor is condemned unless he proves that it is not owed. If it is not expressed, it is necessary that the creditor prove that it is owed.

The same.

If the bond that you propose was issued by you without being owed speaks indeterminately, your adversary is bound to show the debt that is contained in it. But if you expressed in it the cause on account of which a writing of this kind issued, one stands by your confession unless you prove that you promised it without its being owed.

Chapter XV

Latin source headnote: By authority of the ordinary, a notary can reduce the notes of a deceased notary to public form.

The same, to I., Notary.

Since P., a notary overtaken by death, did not complete certain instruments that had been reduced by him to notes, at the petition of those to whom they belong you will be able, by authority of the ordinary judge, faithfully to reduce them to public form, and by this they shall have perpetual firmness.

Chapter XVI

Latin source headnote: An instrument copied by a notary by authority of the ordinary has the same force as the original.

The same.

If instruments are petitioned to be copied because of age or another just cause, they shall be presented before the ordinary judge or one specially delegated by him. If, after inspecting them diligently, he finds them defective in no part of themselves, he shall command that they be copied by a public person, and through this they shall have the same authority as the originals.

Title XXIII: On Presumptions

Chapter I

Latin source headnote: Just as one manifestly doing harm is liable to punishment, so also is one doing so secretly, even though afterward he says that he did it in jest.

Solomon in Proverbs.

As one is guilty who casts spears and arrows unto death, so is the man who fraudulently harms his friend and, when he has been detected, says: "I did it in sport."

Chapter II

Latin source headnote: A definitive sentence is rendered from a violent presumption. And it is a notable case.

The same.

"Bring me a sword." And when they had brought [*the sword before the king,*] he said: "Divide the living infant [*into two parts,*] and give half to the one and half to the other." But the woman whose son was living said to the king—for her bowels were moved over her son—"I beseech you, lord, give her the living infant, and let him not be killed." The other, on the contrary, was saying: "Let him be neither mine nor yours, but let him be divided." The king responded and said: "Give this woman the living infant, and let him not be killed. For she is his mother."

Chapter III

Latin source headnote: Conduct in youth creates a presumption in old age.

Jerome on Proverbs.

"A boy is understood from his pursuits." For whomever you see pursue virtues with the modesty of continence, the hearing of the wise, [*and*] the observance of the commandments of God, *and*

especially simplicity and humility, understand that this person's works [*are*] pure and upright. *But correct one who is contrary to these, or, if you cannot, avoid him lest you be corrupted by him.*

Chapter IV

Latin source headnote: A presumption is made against one who evades judgment by delays.

Pope Boniface, to the Bishops of Gaul.

No one doubts that a guilty person evades judgment in the same manner as one who is innocent seeks to be absolved, *but the crafty cavil of those who believe that matters are to be conducted with cunning counsels will never receive the name of innocence.* For whoever thinks that he evades judgment by delays confesses concerning all things. [*He shall come, etc. Given on the day of the Ides of June, in the consulship of Monaxius, clarissimus, for the eleventh time, 419.*]

Chapter V

Latin source headnote: One who denies one of two charges brought is presumed to affirm the remaining one.

Gregory in a Homily.

"Do *we* not rightly say that you are a Samaritan and have a demon?" Jesus answered: "I do not have a demon." For two things were brought against him: he denied one and conceded the other by remaining silent.

Chapter VI

Latin source headnote: From past things a presumption is made concerning future things.

The same, to Bishop Maximus.

We carry out the heavenly commands more effectively if we share our burdens with our brothers. Therefore, we decree that you, [*the most reverend man Maximianus,*] *our brother and fellow bishop,* shall administer the office of the Apostolic See over all the churches of Sicily, [*so that whoever is enrolled there in the habit of religion shall be subject to your fraternity by our authority, in order that it may not be necessary for him to reach us concerning small causes by crossing such expanses of sea. But if perhaps there are any difficult matters that can by no means be resolved by the judgment of your fraternity, let these alone seek our judgment, so that, relieved from lesser causes, we may be occupied more effectively with greater ones.*] We grant *this office* not to the place but to the person, because from your past life we have learned what we may presume [*also*] concerning your subsequent conduct. [*In the month of December, the tenth indiction, 591.*]

Chapter VII

Latin source headnote: From proximity, knowledge of a fact in a neighboring place is presumed.

The same.

Certain persons—(*And below:*) But as to how Africa is being laid waste by mortality and sicknesses, the nearer you are, [*the more*] keenly I believe that you have learned it. [*But concerning the East, etc.*]

Chapter VIII

Latin source headnote: A deed known in a remote place is presumed known in a neighboring place.

The same, to Bishop Victor.

In proportion as [*it is a joy to us to know that our brothers are becoming fittingly solicitous toward their sons with paternal charity, so we reckon it a sorrow when neither reverence for other brothers nor consideration of the priesthood is able to restrain them from illicit things. Therefore, it is not doubtful that it is clear to your fraternity how grave and bitter is the complaint against our brother, the bishop of the city of Tegessis, by his clerics or by those who are placed in sacred order, because*] it could not remain hidden from you nearby which reached us far away. [*And because, etc.*]

Chapter IX

Latin source headnote: From past things a presumption is made concerning future things.

Jerome on Hosea.

"I shall write for them my manifold laws." From those given previously and neglected, it appears that they will neglect these.

Chapter X

Latin source headnote: More effective proof is required from one who wishes to prove that which is not probable.

Alexander III, to the Dean of Cassium.

Because it is not probable that the priest H. granted the personate of the church to the chaplain R. and received from him the vicarage of the same church, you shall provide *attentively* that you do not receive the proof of *the aforementioned W.* concerning this, unless the common report of the place holds it or such persons appear concerning whom it is not probable that they ought to perjure themselves; since it often happens that witnesses corrupted *by payment* are easily induced to put forward false testimony.

Chapter XI

Latin source headnote: Marriage is proved through long cohabitation and reputation concerning marriage, matrimonial contracts, and other supporting evidence. Panormitanus.

The same, to the Archbishop of Genoa.

That also *has nevertheless become known to us from your inquiry:* that, when *a certain* free woman knowingly cohabited for ten years and more with a certain slave and was known carnally by him, she now asserts that he is not her husband *because the witnesses to the betrothal do not appear.* But the man, claiming her as wife, shows a public instrument in which they name themselves spouses and through which it appears that he made to her a donation on account of marriage. The woman, however, asserting that the instrument was defective, so that the master might be defrauded of the slave, produced several witnesses that *that slave,* often asked by her friends to betroth her, firmly asserted that *he* had neither betrothed nor would betroth her. But the man proved that *the woman herself was* his wife by nothing except the aforesaid instrument and certain witnesses who had seen her wearing

rings; but the woman said that she wore the rings according to the custom of those *women* who sell bread. But because in doubt of this kind the reputation of the neighborhood ought rather to be considered, *it shall belong to your solicitude to inquire diligently into the reputation of the place—whether the aforesaid man had her at bed and board as his wife or as a concubine; and* if the reputation of the place holds that the man kept her at bed and board as a wife, since marriage is the union of male and female retaining an undivided custom of life, the woman is to be compelled to serve the same man with conjugal affection, especially if the aforesaid instrument was drawn up by one who fulfilled his office faithfully.

Chapter XII

Latin source headnote: Carnal union is proved through a violent presumption.

The same.

Having received the letters of your fraternity, *from their tenor* it became known to us that, when P., *your parishioner,* sought *by your judgment* to be separated from the woman A., whom he had taken as wife, the accusers of the marriage produced witnesses firmly asserting that, after *the aforesaid* woman had contracted marriage with the aforesaid man, they saw a blood relative of her husband lying alone with her alone, naked with her naked, in the same bed, with the intention, as they believed, that he should know her carnally. They also said that this happened often in their presence *both* in many secret places and hiding places suitable for this purpose and *at* chosen hours *and places. And public report agrees that after the marriage had been contracted they mingled with one another, which, as you assert, they publicly confessed in your presence, although they denied that they had done it before the marriage was contracted. It is also said concerning the aforesaid woman that, pretending that she had conceived by her husband, she falsely claimed that she had given birth to another's offspring, already baptized, as is reported, and, causing it to be rebaptized, deceived her husband. But in the course of time, when report of the purchased alien offspring uncovered the fraud, she secretly returned it to the parents from whom she had bought it. Afterward the same woman is reported to have prepared a poisonous drink and other snares against the life of the man. Therefore, because your fraternity considered that we should be consulted as to whether the already-mentioned proofs suffice to dissolve the marriage,* we respond to your consultation in this way: *both from the confession and* from a violent and certain suspicion of fornication of this kind, *especially if what is said concerning the offspring and the contrivance of death can be proved,* a sentence of separation can not undeservedly be promulgated, yet in such a way that the man shall have permission to marry another when she is dead, while the woman remains without hope of marriage.

Chapter XIII

Latin source headnote: It says the same as the preceding chapter.

Clement III.

In the third place, your fraternity sought to have the knot of a question of this kind untied: whether a young man ought to have as wife the betrothed woman to whom he consented through words of the present tense, when her niece, springing forth to impede their marriage, proposed that she had previously been known carnally by the young man. Witnesses produced by her said that they believed for certain that she had been the concubine of the said young man *and joined to him by carnal commingling,* adding that they had seen them wandering together many times through plains and

woods, ways and pathless places, and said that they had received the testimony of the neighborhood concerning this. For greater certainty, however, because you believed that what the same woman asserted had been proved less than sufficiently, both she and the young man, bound by oaths, separately confessed that they had previously known one another carnally, although the young man did not wish to be separated from the woman whom he had betrothed. But we, understanding *these things* that have been said, *and considering that the reputation of the neighborhood, the customary conversations of the said woman and young man, and their wandering courses through solitary places were proved by witnesses, and that they separately confessed under oath to carnal knowledge,* especially since this is not said to be hidden but is proclaimed by many as virtually manifest, *adhering to the footsteps of our predecessors, and especially following the statutes of Alexander III of happy memory,* believe it *more advisable and safer* that they not be joined matrimonially, but that, their betrothal being dissolved, they be separated *from one another.* [*Given at the Lateran.*]

Chapter XIV

Latin source headnote: No one ought to be condemned of a grave crime because of a presumption, even a vehement one.

Innocent III, to the Bishop of Nevers and the Archdeacon of Bourges.

We have received your letters containing that, when the cause being conducted between *our venerable brother* the Bishop of Auxerre and certain burgesses of La Charité whom the same bishop was accusing of heresy had been delegated to you and *our beloved son* the Abbot of Colonges by the Apostolic See, both parties *at length, so that the prolixity of the matter might more easily be brought to an end,* appointed you two as arbiters for themselves under a certain penalty, while the power delegated to you was nevertheless reserved. But G., the bearer of the present letters and one of those *whom the aforesaid bishop was accusing,* had confessed his heresy *at La Charité* in a public voice, and had similarly acknowledged concerning *a certain* brother of his that he was laboring with him under the same error. *When this man was convened concerning his faith before our venerable brother the Archbishop of Bourges, and a purgation to be made by the same W., who was believed to be truly penitent and Catholic, had been prescribed to him, W. himself, after furnishing an oath, purged his brother, whom he had publicly asserted* [*to be*] *a heretic, and thus he was judged by the bishop to be both perjured and a heretic. On the contrary, however, the same W. proposed that, although he had publicly confessed concerning himself, he had nevertheless confessed nothing concerning his brother. Hence he could rightly have purged him, especially since he had heard from two chaplains of Aubigny, who knew the latter's conscience, that he could safely purge him as a Catholic; afterward he showed you their letters. But concerning what he had denied about his brother, the bishop immediately convicted him before you through himself, one priest, and another deacon; whence he called him relapsed into heresy. You, therefore, considering these notable contradictions in the aforesaid W., transmitted him with your letters to our presence, his goods having meanwhile been inventoried until we should take care to ordain what ought to be ordained concerning his person and goods; you added that, when the same W., together with certain persons, pressed you to receive his purgation, as you had that of certain others, you were unwilling to admit his oath because he appeared self-contradictory, although a purgation for him with eight reputable men as oath-helpers was admitted.*

But we, *because the little foxes that endeavor to demolish the vineyard of the Lord are to be caught by sagacious effort—for foxes have dens and the birds of heaven nests—from the matters written above* held the aforesaid G. vehemently suspect of heresy, both because he afterward denied having said what he had said before,

as he was convicted before you, and because either he first spoke a falsehood against his brother by asserting him to be a heretic, or afterward committed perjury against God by purging him of heresy, either of which renders him very suspect; although it appears more probable that at the time when, as one truly penitent, he was returning from heresy to the faith, he would not have spoken so grave a falsehood, especially against a brother whom *certainly,* as most dear to him, he would not have asserted to be a heretic unless he had been kindled by zeal for the orthodox faith. Hence it is presumed that, when he afterward purged him of heresy, he perjured himself shamefully.

Wherefore, [*by commanding through apostolic writings,*] we order *your discretion* that, since we do not will him to be condemned of so grave a crime because of suspicion alone, although indeed vehement, you shall receive from him, beyond an oath-bound surety, security of such kind and quantity that he ought to be restrained by fear of corporal punishment; you shall impose upon him a discreet penance from which it can appear whether he walks in darkness or in light, and whether he is truly penitent or feignedly converted. And if in this manner you learn that he is a true Catholic, you shall not permit him to be unduly molested; otherwise, you shall condemn him as a heretic. [*Given at Ferentino, on the Kalends of June, in the ninth year, 1206.*]

Chapter XV

Latin source headnote: One who maintained continence in youth is not presumed incontinent in old age, especially if he is learned.

The same, to the Bishop of Ceneda and the Abbot of Deciquorum.

Since in his youth *our venerable brother C.,* Bishop of Pécs, exhibited himself so mature, honorable, and provident that, *because of the sweet odor of his probity,* he merited to be adorned with the pallium by the Roman Church, it is not lightly to be believed that, after he reached old age, he shamefully cast aside the yoke of the Lord by embracing the stenches *and foulness* of lust, since a stain of this kind, which is sometimes contracted in youth, is more frequently expiated in old age. Who, moreover, would easily believe that a man endowed with knowledge of letters, forgetful of his own salvation, would turn himself to that ignominy of passion so as to perpetrate abominable incest with his own niece, since, even according to the opinions of the pagans, the natural bond between such persons permits no suspicion of a savage crime? Therefore, although the King of Hungary, *of illustrious memory,* had *sometimes* denounced the same bishop to us through messengers and letters concerning such a crime, *supplicantly and insistently* petitioning that we remove from the Hungarian Church an evil of this kind, pernicious by example, nevertheless, because his suggestion appeared to proceed not from the root of charity *but from the tinder of hatred, since he did not cease to persecute him as an enemy, as is manifest throughout the whole province,* we were unwilling to incline our ears as if to malicious denunciations; but, so that we might prove whether the spirit was from God, we commanded the Bishop of Auria, *of good memory,* that he should prudently and cautiously investigate from the fellow bishops whether they believed that the aforesaid bishop had been sprinkled with such a stain. They afterward wrote back to us that they believed him to be a man of honorable conduct, commending his person in many ways. [*But because, etc.* (*cf. c. 12, On Canonical Purgation, V.34.*) *Given at Ferentino, on the Nones of July, in the ninth year, 1206.*]

Chapter XVI

Latin source headnote: A person in whose favor a letter is written concerning the conferral of a benefice with the clause "if he shall have been suitable" is not bound to prove that he is suitable, since he is presumed suitable.

The same, to the Archdeacon and Provost of Milan.

Some time ago we commanded the Archdeacon of Milan, *of good memory,* that he should cause *our beloved son* C., a scholar, to be received as a cleric and brother of the same church by the priest of Saint Victor *of the Forty Martyrs, who alone ministered in that church, in which, as the same scholar asserted, a cleric and a priest formerly ministered, and the same scholar proposes that its resources have in no way been diminished.* But the aforementioned priest, *maliciously* declining the examination of *the* archdeacon, sent *the cleric I.* [*on his own behalf*] *to our presence; and we appointed as auditor for him and the aforesaid C. our venerable brother the Archbishop of Trani, legate of the Apostolic See, then our subdeacon and chaplain; before him the said John* asserted that the resources of the aforementioned church by no means sufficed for two clerics, adding that the aforesaid C. was not suitable for obtaining the benefice of that church.

[*Hence, with their assent, we commanded our venerable brother [N.], Patriarch of Jerusalem, then Bishop of Vercelli, that, if the aforesaid C. lawfully proved before him that the resources of the aforesaid church had not been diminished but sufficed for two and that his person was suitable, he should compel the aforesaid priest to receive him through ecclesiastical censure, appeal removed; and, if any contradictors or rebels should perhaps appear, he should restrain them from their presumption by similar coercion, appeal ceasing; otherwise he should impose perpetual silence upon the aforementioned scholar concerning this. Any witnesses who should be named to him, if they withdrew themselves because of favor, hatred, or fear, he should also compel by canonical coercion, appeal ceasing, to bear testimony to the truth. But when the aforesaid scholar, in order to prove that the resources of the church had not been diminished but sufficed for two, had many times approached the presence of the aforesaid patriarch, then Bishop of Vercelli, and the same bishop had placed under interdict the witnesses named by him because, after admonition had been given beforehand, they were unwilling to bear testimony to the truth, our venerable brother [N.], then Archbishop of Milan, relaxed the interdict by his own authority. For this reason the aforesaid C. was unable to obtain his right. Hence we afterward commanded you, son Provost, that, having inspected the attestations already received—which we willed that you should cause to be exhibited to you through ecclesiastical censure—you should, according to them and others, if the parties should determine lawfully to produce any, since those received had not yet been published, terminate the cause itself according to the tenor of the preceding letters, with the obstacle of any contradiction and appeal removed, reason going before. Therefore, when the parties were afterward established in your presence on this account, since the said C., in order to prove that the resources of the church were sufficient, had named certain patrons and parishioners of the church to give testimony, and although often admonished by you they were unwilling to give testimony, excusing themselves by certain reasons, you bound them with the bond of excommunication unless within fifteen days from then they came to give testimony; but before the appointed day they appealed to the Apostolic See, wherefore the cause was not further pursued. Therefore, willing that an end be imposed upon the same controversy,*] we have determined to commit the cause to you, [*commanding you by authority of the present letters that you shall, as a precaution, bestow the benefit of absolution upon the aforesaid laymen, and shall terminate the cause itself according to the tenor of the former letters, appeal removed, reason going before;*] in such a way that, from that clause—namely, "if the person shall have been suitable"—which is found inserted in our rescript, no necessity of proving himself suitable shall be imposed upon the

same scholar, since prima facie he is presumed suitable unless something contrary is shown. [*Moreover, the witnesses, etc. Given at the Lateran, on the fifth day before the Ides of May, in the tenth year, 1207.*]

Title XXIV: On Oaths

Chapter I

Latin source headnote: An action can be brought for release from an oath whose fulfillment contains turpitude on the part of the recipient. This it says as to its meaning, and it is a notable case. Abbas.

Gregory III.

From the administration—(*And below:*) *Therefore, because creditors bind debtors by oath to pay them usury, to the manifest peril of souls, we, wishing according to the duty of our office to provide for their salvation and to remove the unjust burden from debtors, and especially from those who have given themselves as aid for bringing relief to the land of Jerusalem,* command all of you that you shall compel the creditors themselves by ecclesiastical coercion to release the oaths furnished concerning payment of usury to them, *with the obstacle of contradiction and appeal removed.*

Chapter II

Latin source headnote: An oath furnished by a prelate not to seek the return of property of the church is not valid. Or thus: absolution from an oath induced by fear is made by an ecclesiastical judge.

From the Register of Gregory.

It has reached us that the Bishop of Laodicea, despoiled of his property by Count Ar., was compelled *at sword-point, in an increase of wickedness,* to swear that he would not seek the return of the things thus taken, *and [the count] asks that pardon for so great a crime be imparted to him.* Therefore, having learned of the insult *inflicted upon himself in blessed Peter,* we grieved greatly, asserting that the bishop himself could be bound by no bonds of an oath concerning this; nevertheless, *by apostolic authority,* we absolve him who swore under most abominable compulsion. [*Given at Rome, on the third day before the Kalends of February, in the third indiction, 1080.*]

Chapter III

Latin source headnote: One who changes the fulfillment of an oath for the better does not perjure himself; and no one is bound by an oath to fulfill what he swore if the other party, with respect to whom he furnished the oath, does not fulfill [his part].

The same, to the King of the Franks.

It has reached us *that, when formerly [you went] to the regions of Auvergne, etc.* (*And below:*) For one who changes a purpose or promise for the better does not break it. Nor are you bound to him in any respect, even if you had confirmed *your aforesaid* promise by an oath or an obligation of faith with a condition interposed, if it is established that he did not at all comply with the condition.

Chapter IV

Latin source headnote: A form of oath containing seven chapters is set forth, according to which bishops swear to the Pope; but today all persons receiving a dignity from the Pope swear to him. Let this stand for the summary and division.

The same, to Peter the Subdeacon.

I, N., bishop, from this hour forward shall be faithful to Saint Peter, to the holy *apostolic* Roman Church, to my lord Pope C., and to his successors entering canonically. I shall be neither in counsel nor in deed that he lose life or limb, or be taken by an evil capture. Counsel that he shall reveal to me, either by himself, by letters, or by a messenger, I shall disclose to no one to his harm. I shall be a helper in defending and retaining the papacy of the Roman Church and the rules of the holy Fathers, saving my order, against all men. Summoned to a synod, I shall come unless I shall have been hindered by a canonical hindrance. I shall treat honorably, in going and returning, a legate of the Apostolic See whom I shall know to be a certain *legate,* and shall aid him in his necessities. I shall visit the thresholds of the Apostles every year, either by myself or by a certain messenger *of mine,* unless I shall be released by their permission. So may God and these holy Gospels aid me.

Chapter V

Latin source headnote: A cleric is not bound to furnish an oath of obedience to his bishop except by reason of an administration granted to him.

Pope Urban.

No bishop shall compel his clerics to swear to him, except perhaps those to whom the administration of ecclesiastical property shall have been committed.

Chapter VI

Latin source headnote: One who obligated himself to pay usury is not compelled to pay unless he swore; in that case he is compelled, but he recovers it.

Alexander III, to the Bishop of Ávila.

Debtors, *however,* ought not to be compelled to pay usury to which they had bound themselves, *unless they are bound by oath to pay it*. But if they have sworn concerning its payment, they are to be compelled to render the oath to the Lord, *so that they may be released by the creditors.* And when the usury has been paid, the creditors are to be compelled by ecclesiastical severity to restore it, if necessary.

Chapter VII

Latin source headnote: A debtor who swore to inflict no burden upon the creditor concerning a pledged thing until he paid the debt is not heard when seeking the pledge back and wishing to set off the fruits against the principal; but he ought first to pay the debt in full and then seek the thing together with the fruits received from it. This it says, and it is a notable case.

The same, to the Archbishop of Rouen and his Suffragans.

Know that it has reached our hearing that, when Peter *de Neasdem, during the war that existed between our dearest son Henry, illustrious King of the English, and his sons,* lent a certain sum of money to certain men *of*

a province of the Kingdom of France, he received from them in pledge certain possessions and revenues, binding them to himself *under* the sanctity of an oath that they would inflict no burden *or molestation* upon him concerning *those possessions and revenues* until they paid him the *lent* money. Although he has not yet received his *principal, as he asserts,* from those possessions and the *aforesaid* revenues after expenses have been deducted, *nevertheless, because* you, brother Archbishop, bound him with the bond of excommunication on this account, *we are therefore compelled to direct our letters to you, especially since he wishes, as he asserts,* to be content with [*his*] *principal.* Therefore, *by commanding you through apostolic writings,* we order your fraternity that, having received from the aforesaid P. sufficient security that *in this matter* he ought to obey your mandate, you shall *by our authority wholly* absolve him, *contradiction and appeal ceasing, from the sentence by which he is bound.* Then, if it is so, you shall compel his debtors, who are said to have withdrawn *from him* the aforesaid possessions and revenues contrary to *their* oath, by ecclesiastical censure to restore these *to the same P., delay and appeal ceasing,* and not henceforth inflict molestations upon him *contrary to their oath* until the money is paid to him, *because it is not safe for anyone, but rather dangerous, to violate the sanctity of an oath.* But when they have paid *his* money to him, as they swore, you shall endeavor *studiously to admonish and diligently* induce him to restore whatever, after expenses have been deducted, it is established *before you* that he received beyond the principal; and, if after admonition he does not do *this,* you shall, *appeal removed,* bring him back under the same sentence of excommunication, *because, just as it is dangerous for debtors to violate their oath, so it is no less dangerous for creditors to retain what they have received as usury, since the crime of usury is detestable and exceedingly horrible and condemned by the page of either Testament.*

Chapter VIII

Latin source headnote: If an oath extorted through fear can be observed without the destruction of eternal salvation, it is to be observed; nevertheless, the Roman Church has been accustomed to absolve from such an oath.

The same, to the Archbishop of Sens.

But if someone, by gravest fear and under the sanctity of an oath, has compelled another to renounce his right and has retained it for himself, because you wished to consult us whether one of them or neither ought to have it, we have determined to respond *this* to you: it is not safe for anyone to go against his oath unless the *oath* is such that, if observed, it tends toward the destruction of eternal salvation. Nor do we will *by our response* to give anyone material for going against his own oath, lest we appear *to be* authors of perjury. But it is recalled that this was sometimes done in the Roman Church by many of our predecessors: clerics who, under compulsion, abjured the ministry of the church merited the benefit of absolution from the oath, and, in order to restrain the iniquity of those who compelled ecclesiastical men to furnish *that oath,* they were permitted to minister in the same church.

Chapter IX

Latin source headnote: Monks who swear to remain in hostage for a debt of the monastery, and sureties who swear to keep the creditor indemnified, are compelled to observe their oaths.

The same, to the Bishops of Sardinia.

From *a certain* rescript presented to us, it became *manifestly* known to us that *R., formerly* Abbot of Tremiti, agreed with Peter concerning a sum of eight thousand solidi in this manner—(*And below:*) In addition, the aforesaid abbot gave certain monks as hostages, who swore to observe the agreement, so that, if they failed, other monks would be placed in hostage in their place. Moreover, if the said monks did not keep faith, the abbot gave to the same man V. and his wife as sureties, who are likewise said to have pledged faith. Therefore, we command that you shall take care *studiously* to admonish the abbot and the monks, and V. and his wife, that, as they swore, they cause the same agreement to be fulfilled; otherwise, you shall prohibit entry into the church to *the same* abbot and monks, and prohibit divine offices from being celebrated in the land of the aforesaid V. and his wife until worthy satisfaction.

Chapter X

Latin source headnote: One who goes against a lawful oath not from necessity but voluntarily is perjured and is to be removed from the church.

The same, to the Bishops of London and Worcester.

We have received the complaint of R., canon *of the church* of Lincoln, that, when a cleric named V. *Savage* had paid him two bezants in the name of the church of Statera *for very many years, and had confirmed by an interposed oath that he would pay them to him* annually, *the sanctity of the oath now having been contemned,* for two years he has ceased from payment of a pension of this kind. Therefore, because those who are entangled in the crime of perjury do not deserve to rule churches, *by commanding you through apostolic writings,* we order your fraternity that *you shall summon the parties before your presence and take care to inquire more diligently into the truth of the matter concerning these things; and,* if it is established to you that the aforementioned V. ceased from payment of the same pension contrary to his oath not from necessity but voluntarily, you shall, *by our authority, contradiction and appeal ceasing,* remove him from the aforesaid church and not at all delay restoring it to the aforesaid R., *and shall cause him to possess it peacefully.*

Chapter XI

Latin source headnote: If a person presented swears to the presenter to increase an ancient payment and afterward swears the contrary to the person instituting him, the second oath is valid and not the first; nevertheless, he is removed from the church.

Lucius III, to the Bishop of Norwich.

Your fraternity considered that we should be consulted as to which oath is to be followed when religious persons bind *certain* clerics by the sanctity of an oath to pay a greater pension than customary, or to furnish something [*in the name*] of the benefice beyond the customary pension; but, when they are instituted by bishops, they swear that they will not increase the ancient and customary pension. We therefore respond briefly to your consultation that, since the later oath is supported by reason and the authority of the Lateran Council, it prejudices the first, which proceeded from greed. Moreover, it is just that clerics [*thus entangled*] be perpetually excluded from churches because of the perjury that they cannot avoid.

Chapter XII

Latin source headnote: Bishops are to be punished more gravely for perjury than others. This it says. — § 1. An oath not to furnish aid to a relative is unlawful. This it says.

Urban III, to the Archbishop of Pisa.

When a certain—(*And below: cf. c. 8, On the Times of Ordinations, I.11.*) We respond to your consultation in this way: punishment is to be taken against bishops who have transgressed their oath all the more gravely in proportion as they are eminent in greater dignity and others can more easily be provoked to similar acts by their example. (*And below: cf. c. 8, On the Times of Ordinations, I.11.*)

§ 1. But those who swear not to speak to father, mother, sister, or brother, or not to furnish them the aid of humanity, are to be absolved from observance of that oath, since it is unlawful and contrary to *all* reason; nevertheless, a fitting penance is to be imposed upon them for having sworn wrongly concerning this.

Chapter XIII

Latin source headnote: The oath of a monk abjuring the cloister is not valid, and a grave penance concerning this is imposed upon him.

The same.

As we have learned from the letters of your discretion, R., prior of your monastery *and bearer of the present letters,* inflamed by the heat of anger, *by the rash impulse of a precipitate mind* confirmed by oath that he would no longer remain with the monk G. in the cloister of the same monastery, to which he bound himself by the bond of profession. *Therefore, to you who ask what is to be done concerning this with regard to the same monk,* we respond that, *since blessed Benedict in his rule, which nearly all monks profess, altogether prohibits swearing,* it was not permitted to the aforesaid monk to make the rash oath, especially since he would break the faith of his profession and make void his purpose of stability. Therefore, your solicitude shall provide concerning him that such a penance be imposed upon him *through which he may make satisfaction to almighty God for taking his name in vain,* so that anyone else, deterred by his example, may fear to do anything similar; but he himself shall perform his penance with perpetual stability in the cloister, which he could not lawfully abjure, *yet in such a way that, because he approached our presence, he is not deprived of the customary portion of the benefit of the rule.*

Chapter XIV

Latin source headnote: A vassal who swore to a prelate is not compelled to swear to his successors.

Clement III.

Simplicity, the friend of truth, *does not seek to be obscured by any deceits of words or by any coverings of ambiguities.* [*It is therefore frequently necessary that those things which appear to have been said less fully, and which might generate the scruples of ambiguities although said soundly, should shine forth more clearly through truthful explanation.*] *On this account, dearest son in the Lord, having heard that a question was moved in the presence of your greatness as to whether it was gathered from the tenor of our rescript that each of your heirs ought to furnish an oath of fealty and homage to each of our successors; having understood also the exposition of our beloved sons A., cardinal priest of the title of the Holy Cross in Jerusalem, and P., cardinal priest of the title of Saint Lawrence in Damaso, legates of the Apostolic See, which was transmitted to us under the attestation of their seals;*

unwilling to dissent in any way from their sound understanding, we have determined to intimate to the royal serenity that, since our intention is to impose nothing intolerable upon you [*and your*] *heirs, we respond to you in this article* in such a way that your heirs who have sworn to us or any of our successors shall not at all be compelled to swear [*afterward*] to others. Nevertheless, they shall be bound at all times faithfully and without any tergiversation to observe toward our Catholic successors who shall be in office for the time being the purity of homage and fealty, no less than if they had sworn, *unless perhaps homage shall have been relaxed to any of them, as it was to your person, by the benignity of the Apostolic See; yet such a person shall not on that account believe himself immune from observance of his fealty.* [*Given at the Lateran.*]

Chapter XV

Latin source headnote: The Church is accustomed to absolve from an oath extorted through fear, and its transgressors are not punished as persons sinning mortally.

Celestine III.

But in that question which *in addition to this* is placed fifth—namely, whether those who made an oath unwillingly in order to preserve life and property are absolved from the bond of the oath—*following the custom of our Church,* we judge nothing other than what our predecessors, the Roman Pontiffs *Zacharias, Gelasius, Gregory VII, Urban II, and others,* are known to have judged, who absolved such persons from the bonds of the oath. Moreover, so that action may be taken more advisedly and material for perjuring themselves be removed *from them,* it shall not be said to them so expressly that they are not to observe the oaths; but, if they do not attend to them, they are not on that account to be punished as for a mortal crime.

Chapter XVI

Latin source headnote: If the person whose mandate I swore to obey commands me to do something contrary to an oath previously and lawfully made by me, I am not bound to observe it. This it says, adhering to the words of the letter.

Innocent III, to H., S., and M., Citizens of Venice.

Coming to our presence, *the beloved son* A. [*Mengun,*] *bearer of the present letters, by a humble report* explained to us that, *when* formerly *he had been established in the presence of the beloved son, the noble Doge of Venice, together with several others for the discussion of many causes,* he contended with M. Maurien., alternately inflicting insults. Because he incurred grave enmities on this account, *and you and your other relatives were more vehemently stirred on this account,* certain persons who were lovers of either party, *placing themselves in the middle, endeavored to recall that disturbance to peace and concord,* suggested to the aforesaid A. that, in satisfaction for the injuries, he should swear to obey your mandate. And since he did not believe that he had committed anything of such a kind that something grave ought to be imposed upon him, and had furnished that oath under such confidence, you *immediately* commanded him under the obligation of the oath that, *from the feast of blessed Michael immediately past onward,* he should never enter the court of the *said* doge except when all persons were generally called to court by his edict, *or unless it should happen that he was released by the nobleman Count Roger and M. Mauricen., who are said to be absent.* But because the same A., who, *as he asserts,* is a counselor of the said doge and is bound by promise to assist in their right many churches of which he is advocate, would by no means have sworn in this way if he had foreknown that mandate contrary to him, *especially since he fears to act*

against the salvation of his soul, through apostolic writings we command [*you*] that, for the remedy of your souls, you shall wholly revoke the mandate itself. But if you are unwilling or unable to revoke *the mandate itself,* know that *we have commanded our venerable brother* the Patriarch of Grado that, if *that* mandate conflicts with the prior oath lawfully made, he shall by our authority declare that it is not to be observed. [*Given at Civita Castellana, on the fourth day before the Ides of October, 1198.*]

Chapter XVII

Latin source headnote: One who swore to defend a church and, when required, refuses without just cause is perjured, and an appeal does not defend him.

The same, to Master Apollinaris.

You asked *the Apostolic See* in a brief question whether a person who is bound by oath to preserve and, to the extent possible, defend the rights of some church incurs the guilt of perjury if, when necessity presses, he *has been* required under the obligation of the oath concerning this and, *unwilling to do it, has determined to appeal to the Apostolic See. But we respond to your question in this way:* in this article, such an appeal does not excuse the appellant from perjury; rather, unless *some* difficulty exists on account of which the person required cannot aid the church, he is instead entangled in the fault of perjury. [*Given at the Lateran, on the twelfth day before the Kalends of November, 1198.*]

Chapter XVIII

Latin source headnote: One who knowingly swears to something unlawful does not need absolution but is bound not to observe it. But if he swore in ignorance, he ought to observe it if it is observable in some lawful manner. If, however, he swore to something lawful that he thought unlawful, he ought to observe the oath, but shall do penance for his depraved intention.

The same, to the Illustrious King of Aragon.

In proportion as we love your person *among the other Christian princes with more sincere charity, with so much the more diligent solicitude do we wish to take precaution for the royal serenity, lest anything, which God forbid, threaten it that could redound either to the peril of the soul or detriment of the land. For from the tenor of your letters and those of many prelates, and also of many others dwelling in your kingdom, it became known to us that, when you were hastening with a multitude of armed men against the enemies of Christianity, who at that time occupied the land of Spain by reason of the magnitude of their power, to the aid of our dearest son in Christ, the illustrious King of Castile,* certain of your counselors—or rather deceivers—induced your mind to swear, without the assent of the people having been sought, that until a certain time you would preserve your father's coinage, which nevertheless around the time of his death had been defrauded of its lawful weight. But since *the same coinage* has been so diminished and rendered of lesser value that grave scandal is generated among the people on this account, you, desiring to revoke what you had done indiscreetly and to satisfy the necessity of the people, supplicated us humbly to be absolved from observance of the aforesaid oath, *from which you fear that grave peril threatens you and your kingdom.*

Concerning this, a diligent investigator, *the truth having been discovered,* could easily perceive that absolution was not so much necessary as interpretation was to be sought, because, when you made the oath, you believed the coinage to be either false or lawful. If false—*which we do not believe concerning the royal serenity*—the oath would have been unlawful and in no way to be observed, and penance would have to be imposed upon you for it, since an oath was not instituted to be a bond of iniquity.

But if you believed *it* to be lawful, the oath was lawful and is altogether to be observed. And so that it may be observed blamelessly, we counsel and command that, the coinage that had been defrauded of its lawful weight having been rejected, another coinage be struck under the name of your father, which you shall restore to lawful weight according to the best condition that it had in your father's time, in such a way that [*also*] the old coinage that had not been falsified from that condition shall be spent equally with it, through which both loss can be avoided and the oath observed. Nevertheless, if *perhaps* when furnishing the oath you believed that the coinage itself had been diminished from lawful weight, and your conscience reproaches you concerning this, *you shall humbly confess your sin to our venerable brother the Bishop of Zaragoza, to whom we write concerning this,* and shall *devoutly receive and* endeavor to fulfill the satisfaction imposed upon you for the unlawful oath. [*Given at the Lateran, on the Nones of April, 1199.*]

Chapter XIX

Latin source headnote: An oath furnished to the prejudice of the right of a superior is not valid.

The same, to the Consuls and People of Todi.

When *recently* your *beloved sons,* the consuls, came to the Apostolic See, *we received them benignly and* took care both to admonish [you] *paternally* and to convene [you] somewhat sharply concerning those matters that are rather frequently reported to us about you. For although, when appeals have been interposed to the Apostolic See, you are bound humbly and devoutly to defer to them, since even secular laws do not deny the benefit of appeal after sentence to persons aggrieved, you, *attending to this less than befits you,* put into execution sentences suspended by appeal, *and, in contempt of the Apostolic See, burden those appealing when aggrieved.* But the same consuls took care to explain to us, *in your excuse,* that, when any of you are called to the office of consul, they confirm by their own oath that they will judge concerning loans and kidnappers according to the custom of your city and will execute within twenty-eight days the things they have judged. Hence they said that, saving an oath of this kind, you were unable to defer to appeals concerning these matters.

But because judges swore to judge according to the laws no less than your consuls according to the custom of your city, and therefore, just as judges could burden subjects contrary to the laws, so also could your consuls contrary to custom, *lest we appear to fail the aggrieved even in these matters, through apostolic writings* we command *and order* all of you that, *since we will your approved customs to be observed,* you shall *humbly and devoutly* defer to appeals interposed to us, since the aforesaid oath cannot excuse you, in which the right of a superior ought to be understood to be excepted. Therefore, since, *as we have learned,* after *the beloved son* S., bearer of the present letters, appealed to the Apostolic See from the sentence of Judge G., you determined to put the sentence itself into execution, placing the adversary of the appellant in possession of the things concerning which the question was being conducted, we nevertheless will and command that you restore the possession itself to the same man. Otherwise, know that we have commanded *our venerable brother* the Bishop of Nocera *through apostolic writings* that, *admonition having been given beforehand,* he shall compel you to this by ecclesiastical censure, *appeal removed.* [*Given at the Lateran, 1200.*]

Chapter XX

Latin source headnote: One who swears not to recover usury can, notwithstanding the oath, recover it upon a new cause. This it says according to the more notable understanding.

The same, to the Archbishop of Pisa.

Know that it has reached our hearing that, when I. *Pellar.* and G., *his son,* had paid no small amount of usury to Peter *Soctan.,* by an oath *furnished* they confirmed that neither by themselves nor through another would they recover the aforesaid usury, or bring a question concerning it before an ecclesiastical or even a secular judge. And when *the creditor himself, established at the point of death,* made a testament, he commanded his heirs that they should take care to restore it to all who should *reasonably* prove that they had given usury to him. Hence, since the aforesaid I. and G. do not attempt to recover the usury because of an oath of this kind, and the heirs of the aforesaid P. neglect to satisfy them concerning the usury, *therefore, through apostolic writings,* we command your fraternity that you shall cause it to be publicly proposed in the church under penalty of excommunication—or shall propose it—that those who know the truth concerning this shall come forward to put forward testimony; and, if it is *lawfully* established to you concerning the foregoing through the statements of witnesses or other documents, you shall, *admonition having been given beforehand,* compel his heirs by ecclesiastical censure, *appeal removed,* to restore all the usury that their father received from the aforesaid *I. and G.* [*Given at Rome at Saint Peter's, on the Ides of March, 1205.*]

Chapter XXI

Latin source headnote: A general oath ought, if possible, to be understood in such a way that it does not conflict with law; otherwise, as rash, it does not bind contrary to observance of law.

The same, to the Archbishop of Naples.

Know that it has reached our hearing that *some time ago,* almost through extortion, an oath of such a kind was furnished by you: that in every cause you ought to observe judicial order. But because, according to canonical traditions, manifest matters do not need an accusation, nor is the judicial order that ought to be observed in other matters to be observed in them; and because, when you swore under the foregoing tenor, you did not have it in mind that on account of this you would go against the canonical sanctions—for otherwise it would have been not an oath but rather perjury, and would not have to be observed for any reason—we, wishing to interpret your oath more benignly so that it accords with canonical institutes, intimate to your fraternity by authority of the present letters that, in manifest and notorious matters, we do not believe that by reason of the foregoing oath you are bound to observe the subtlety of judicial order, which the very *reason* of law also postulates and requires not to be observed in all respects in such matters. Hence, to one looking subtly, it will appear, *and not undeservedly,* to proceed from the order of judgments that judicial order is not observed in all respects in the foregoing, although also according to the approved understanding *of divine scripture* what you swore can rightly be understood as meaning that you would observe judicial order in all causes—namely, in those in which judicial order is to be observed. Therefore, by acting thus, you will both observe the tenor of the oath and not omit the canonical institutes. [*Given at the Lateran, on the eighteenth day before the Kalends of December, 1198.*]

Chapter XXII

Latin source headnote: If one oath owed to one person is furnished to another, it is unlawful, and notwithstanding it the oath is to be furnished to the person to whom it is owed.

The same, to the Judge of Cagliari.

We believe that you flourish in such discretion that you understand by yourself that a burden is not remitted but increased when that which is to be furnished to another as a debt is imprudently discharged to someone else. Indeed, when *our venerable father* the Archbishop of Torres exacted from you in our name an oath of fealty, as he had received a mandate from us, you deferred furnishing it into his hands, asserting that you had furnished an oath of this kind to *our venerable brother* the Archbishop of Pisa, saving the honor of the Apostolic See. Therefore, since you are bound to make fealty to us and the Roman Church, *as even your prudence acknowledges,* if you reckon the oath furnished to be contrary to that which is to be furnished to us by you as a debt, you will judge it unlawful and, notwithstanding the unlawful oath, will furnish what is lawfully—indeed, by debt—sought; or, if the oath furnished does not conflict with that to be furnished, you will furnish the latter without difficulty. *We therefore admonish and attentively exhort your nobility, and through apostolic* writings [*to you*] *command and order that, every excuse and occasion ceasing, into the hands of the same archbishop you shall furnish to us and the Roman Church an oath of fealty.* [*Given at Ferentino, on the seventeenth day before the Kalends of October, 1203*.]

Chapter XXIII

Latin source headnote: One who swore to stand by someone's mandate is not bound to obey if he commands unlawful things, such as that he disinherit his son or abjure his wife.

The same, to the Bishop of Alatri.

Quintavallis, *a vicar,* intimated to our ears that, *when formerly his daughters and Giborga and Venetia, daughters of John Bertius, had come from words even to blows, the same Quintavallis,* desiring *on the advice of neighboring persons* to make satisfaction to those women *and their relatives* for the injury that his daughters had inflicted upon the other women, furnished an oath that he would obey their mandate *for their injury. After receiving the oath from him,* they gave him such a mandate under the obligation of the oath: that, if at any time his sons *or daughters* or his wife should cast some insulting deed or word against those women, the same *Quintavallis* should disinherit *his* daughters and sons and remove his own wife from himself. Wherefore, *through apostolic writings,* we command your fraternity that *you shall inquire more diligently into the truth concerning the foregoing, and, if you learn that the matter is so,* since the oath was lawful but the mandate unlawful, you shall enjoin upon the aforesaid *daughters of John Bertius* that they revoke that mandate; otherwise, *supported by our authority,* you shall declare that he is not bound to observe that mandate. [*Given at Anagni, on the third day before the Nones of February, 1204*.]

Chapter XXIV

Latin source headnote: Spouses cannot separate themselves, even as to bed and mutual cohabitation, for a light and rash cause, even with the interposition of an oath.

The same, to the Archbishop of Tarragona.

Your fraternity considered that we should be consulted as to what is to be done by you concerning this *article, namely,* that B. *of Bell-lloc* and A., his wife, *formerly* swore to one another that they would never seek one another again; but now he insistently seeks her again, while she on the contrary affirms that she would sooner make herself a Saracen *and lose her soul* than return to him, *but would willingly dismiss the adulterer to whom she adhered after she withdrew from him, and would promise and swear chastity.* We therefore, responding to your fraternity *concerning this, through apostolic writings* command you that you shall *attentively* admonish and induce both to observe continence. If they wish to promise and observe it, you shall permit each to remain without the other. Otherwise, if the man is unwilling to be continent, you shall compel her, by a sentence of excommunication and with appeal removed, to return to him and remain with the man as his wife, since an oath of this kind was rash and adultery was committed on both sides. [*Given at Ferentino, on the twelfth day before the Kalends of July, 1203.*]

Chapter XXV

Latin source headnote: One who swore to contract with a woman can reject her because of supervening fornication or deformity, but not because of preceding fornication or deformity. This it says. — (*Moreover, that, etc.:*) If a man swore not to accuse his wife, the oath is rash. But if he swore this specifically concerning adultery, he will be able to denounce her, but ought not to accuse her.

The same, to the Archbishop of Genoa.

Just as, if a man had sworn to a woman when he contracted with her that he would always hold her as his lawful wife, *he indeed* could not dismiss her for fornication that the woman had committed before, but could dismiss her for fornication that she might perpetrate afterward, notwithstanding an oath of this kind, because in it this condition was to be understood—namely, if she did not sin against the law of marriage—so, if someone has sworn that he will take a certain woman as wife, *he assuredly* cannot object against her preceding fornication, but *can object against her* subsequent fornication so that he does not take her as spouse, because in that oath this condition ought to be understood—namely, if she does not go against the rule of betrothal. Otherwise, if after an oath of this kind she became a public prostitute, he would be bound to take her as wife, which is utterly absurd. For if, after marriage has been contracted, a man can lawfully dismiss a wife from his cohabitation because of fornication, much more strongly, before marriage has been celebrated, a betrothed man can lawfully refuse to admit a betrothed woman into his cohabitation for the same cause, because a guest is more shamefully cast out than not admitted; notwithstanding in either case the bond of the oath, which indeed, because of the condition to be understood, is of such a kind that the person who swore can comport himself toward either outcome without transgression.

But if, after an oath of this kind, the woman became not only leprous but also paralytic, or lost her eyes or nose, or something more shameful befell her, would the man be bound to take her as wife? Certainly, he could not dismiss her once taken. But would he be bound to admit her when not taken, although that which sometimes does not dissolve a contract impedes a contract to be made?

Moreover, that oath is undoubtedly rash if a man swears to his wife that he will accuse her of no crime, because, if the woman should become an unbeliever and should be unwilling to cohabit with the man without insult to the Creator, or [should seek] to draw him into the error of unbelief, then the man ought without hesitation to accuse her before his judge so that, unless she came entirely to

her senses, he should dismiss her altogether according to the canonical sanctions. But if he had expressly sworn that he would not accuse her concerning adultery, would an oath of this kind have to be observed, since scripture testifies that he who conceals the crime of his wife is a patron of turpitude, and according to the rule of the Gospel, if after being corrected a first and second time she were unwilling to come to her senses, it would have to be told to the Church, so that she would thereafter be avoided as a heathen and a publican, and through this a free faculty of sinning would not be furnished to her because of the impunity of sin? But can a man not forgive his wife who sins *against him,* not only seven times but even seventy-seven times, according to the truth of the Gospel? It therefore appears safer in this case that, because of the sanctity of the oath, the man desist from accusing his wife for the pronouncement of a separation, although he can denounce her for the performance of penance. *Therefore, having weighed the tenor of this response, you shall proceed in the cause concerning which you determined to consult us.* [*Given at Viterbo, on the Kalends of September, in the tenth year, 1207.*]

Chapter XXVI

Latin source headnote: An oath is lawfully made from a necessary cause, even by religious persons.

The same, to the Abbot and Chapter of Châtillon.

Although Christ commanded according to the truth of the Gospel [*that*] your speech be "yes, yes," *and* "no, no," [*that is,*] that an affirmation or negation should proceed from the heart just as it proceeds from the mouth, nevertheless, because as human malice grows a simple assertion or negation is scarcely believed, he therefore prudently added: "What is more than this is from evil." From evil indeed, not so much of fault as of punishment; and not of those furnishing the oath but of those exacting it. For unbelief of this kind is more punishment than fault. Hence he did not say "evil," but said "from evil."

For although the Lord appears to have prohibited an oath, he nowhere prohibited swearing by the Creator, but by a creature, lest through an oath of this kind the honor of the Creator be transferred to a creature. Wherefore, when in the Gospel he had premised, "I say to you, do not swear at all," he immediately added: "neither by heaven, because it is the throne of God; nor by earth, because it is his footstool; nor by Jerusalem, because it is the city of the great king; nor by your head, because you cannot make one hair white or black." And although one must not swear by a creature, nevertheless, if one swears by a creature, it is indeed to be observed, provided that what is sworn is lawful, because, as Truth testifies, "he who swears by heaven swears by the throne of God and by him who sits upon it."

James also does not simply prohibit an oath, but "the will to swear," when he says: "Before all things, my brothers, do not swear," since spontaneous will ought not to induce anyone to an oath, [*because one who swears easily perjures himself easily,*] but pressing necessity ought to draw him. And then you can swear without fault, provided the oath has those three companions concerning which the Prophet speaks thus: "And they shall swear, 'The Lord lives,' in truth, judgment, and justice, *and all shall bless him and praise him.*" But when James adds, "neither by heaven, nor by earth, nor by any other oath whatsoever," he forbids swearing by any creature, whatever it may be. Otherwise, the Apostle would not have said: "Men swear by one greater than themselves, and an oath for confirmation is the end of all their controversy." In this he plainly shows by whom one is to swear, when he says, "Men swear

by one greater than themselves," that is, by God; and why one is to swear, namely, that an oath may be the end of all controversy.

The angel also whom John saw in the Apocalypse standing upon the sea and upon the earth lifted his hand to heaven and swore by him who lives for ever and ever. Christ also is read to have said more in the Gospel than "yes, yes," "no, no," since he very frequently said, "Amen, I say to you." Explaining this according to Luke, when he had premised, "Amen, I say to you, that no prophet is accepted in his own country," he consequently added: "In truth I say to you, that there were many widows in Israel in the days of Elijah." The Apostle also swore when he said, "God is my witness," and again, "I die daily by your glory, brothers." The Greek copies show these words to be a most manifest oath.

For if to swear were evil in itself, assuredly the Lord would not have sworn, although in the Old Testament it is read: "Because the Lord has sworn and will not repent," and again: "The Lord swore truth to David and will not frustrate him"; indeed, he also commanded in the Old Testament: "Render your oaths to God." For some things are prohibited because they are evil in themselves, such as theft, adultery, and things of this kind, which are not to be done in any way. But some things are prohibited because of a cause, not because they are evil in themselves, but because, if they are done frequently and much, evils follow from them. Thus wine is not [*indeed*] evil in itself, and nevertheless the Apostle prohibits it, saying: "Do not become drunk with wine, in which there is wantonness," since wantonness is generated from frequent and immoderate drinking of wine. So also an oath is indeed not evil in itself, since it is a confirmation of truth, but nevertheless it is prohibited for a cause, because perjury often occurs from frequent and incautious swearing, as is read in Ecclesiasticus: "A man who swears much will be filled with iniquity, and a plague will not depart from his house."

Therefore, just as Paul permitted his disciple [*namely*] Timothy, on account of necessity, to use a little wine because of his stomach and frequent infirmities, so assuredly, when necessity exacts it, one can safely swear concerning a true, lawful, and honorable matter, because when the cause ceases the effect ceases. Therefore, although you ought to be perfect men, so that, insofar as you can, you avoid the bond of an oath, nevertheless, wishing *with paternal solicitude* to provide for the indemnity of your monastery, lest through a deficiency of witnesses it sustain injury to its right, *by the authority of him who says in the Gospel, "If your brother sins against you, correct him between you and him alone; and, if he does not hear you, take with you two or three witnesses, so that in the mouth of two or three witnesses every word may stand,"* by the present page we grant to you that you and the lay brothers of your monastery may in its causes, when other witnesses are lacking, bear testimony to the truth on its behalf. [*Let no one therefore, etc. Given at Rome at Saint Peter's, on the twelfth day before the Kalends of April, in the ninth year, 1206.*]

Chapter XXVII

Latin source headnote: An oath furnished contrary to ecclesiastical utility does not bind.

The same, to the Bishop of Amelia.

As was intimated to our ears, when the Church of Todi was *some time ago* vacant, its canons—and *our venerable brother* the *Bishop of Todi* with them, while he was established in minor orders—made certain oaths to the detriment of episcopal right before any discussion was had concerning the election of a pontiff, *as to whether they ought to be observed, especially since it would happen from them that episcopal revenues*

would be diminished, the same bishop, as a provident and discreet man, formerly considered that we should be consulted. We therefore, wishing with paternal solicitude to provide for his salvation, caused a fitting penance to be imposed upon the bishop for the incautious swearing. *And nevertheless, considering that an oath was not instituted to be a bond of iniquity, and* because things attempted contrary to ecclesiastical utility are to be called not oaths but rather perjuries, *through apostolic writings* we command your fraternity that, *personally approaching the Church of Todi,* you shall inquire more diligently from the canons themselves into the truth concerning the foregoing; and, if you find that the things *said above* are true, you shall, *supported by our authority and with appeal removed,* reduce to its due state whatever you find to have been attempted in this manner to the detriment of episcopal right, *causing what you decree to be firmly observed through ecclesiastical censure*.

Chapter XXVIII

Latin source headnote: An oath furnished concerning an act invalidated by law principally in favor of the person swearing, although secondarily in the public interest, necessarily is to be observed if it was furnished neither by force nor fraud and does not principally redound to the prejudice of another. This it says, with the core of the chapter considered in a very singular manner.

The same.

Since it sometimes happens *in your diocese* that, while a marriage continues, women [*spontaneously*] consent to alienations concerning dotal property and donations *given to them* on account of marriage, confirming by their own oath that they will not afterward contravene them, and, after the marriage is dissolved in the course of time, endeavor to contravene them, your fraternity asked us whether this is permitted to them. But we respond to your fraternity in this way: although the consent of women in such matters does not appear obligatory according to the lawful sanctions, nevertheless, lest under such a pretext it happen that a way is opened to perjuries, the women themselves ought to observe oaths of this kind, furnished willingly *and in good faith,* without force and fraud, since they do not redound to the prejudice of another, nor, when observed, tend toward loss of eternal salvation. [*Moreover, you asked, etc. Given at the Lateran, on the sixteenth day before the Kalends of June, in the thirteenth year—1210.*]

Chapter XXIX

Latin source headnote: One who initiates an unjust war is compelled to restore the things he occupied through violence and to absolve those from whom he unduly extorted oaths. This it says as far as the words "But the oath." — § 1. No one is bound by an oath to fulfill what he swore if the other party, with respect to whom the oath was furnished, does not fulfill [his part].

The same.

As [*the tenor of the letters offered to us by the beloved son I. de Cuter. expressed, he recently experienced in himself that the deceptive pleasantness of this life scarcely or never remains in the same condition. For the more willingly one clings to it, the more easily one falls with it as it falls.* (*And below:*) *Therefore, since we are established in that place where, according to the prophetic word, we ought to dissolve the bonds of impiety and the bundles that oppress, to send free those who are broken, and to break every burden, through apostolic writings we command your discretion that,*] if it is established to you that the aforesaid H. unjustly initiated war against I., you shall endeavor *attentively to admonish and* induce H. himself to restore *both* [*the*] *land of the same man and all*

other things occupied through violence of this kind *without delay* to the complainant, wholly absolving him from the oath furnished to H. But if *perhaps, after your admonitions,* he is unwilling to acquiesce, you shall, if the foregoing rests upon truth, compel him to this by a sentence of excommunication, [*with the obstacle of any contradiction and appeal removed,*] *also* subjecting his land to a sentence of interdict.

§ 1. But the oath that [*the same*] I. asserts that he *last* furnished, if it was made with the assent of both parties, does not bind the person who furnished it while the person to whom it had been furnished neglects to observe what he promised.

Chapter XXX

Latin source headnote: Clerics who do not hold temporal things from laymen are not bound to furnish them oaths of fealty.

The same, in the general council.

Laymen indeed strive to usurp too much of divine right when they compel ecclesiastical men who hold nothing temporal from them to furnish oaths of fealty to them. But because, according to the Apostle, a servant stands or falls to his own lord, by authority of the sacred council we prohibit clerics of this kind from being compelled to furnish such oaths to secular persons.

Chapter XXXI

Latin source headnote: One who swears not to be against someone can be against him in causes belonging to himself and his church. This it says according to the understanding of the gloss.

Honorius III, to A. and C., Canons of Antioch.

Your petition exhibited to us contained that, while the Church of Antioch was vacant, *the nobleman R.,* Prince of Antioch, fearing that certain conspiracies would be made against him, extorted from you an oath that henceforth you would not be against him. *But since the same prince has frequent disputes against the church itself, you can neither fail the church without its detriment nor dare to assist it lest you appear to act contrary to the said oath. Wherefore you humbly supplicated us that we should deign to provide concerning these matters with paternal solicitude. We therefore, providing equally for the utility of the same church, your salvation and reputation, and the honor of the said prince,* declare by a fitting interpretation that you are not bound by an oath of this kind so that you cannot stand freely against the prince himself in lawfully defending the rights and honors of the church itself, and also your own particular rights, restraining you only from a machination through which the same prince ought to incur injury to his person or loss of his principality. *We therefore decree that, when necessary, by resisting the said prince for defense of the right or honor of the often-mentioned church or of yourselves, you are subject through this to no mark or calumny.*

Chapter XXXII

Latin source headnote: When the matter concerns usury, a judge can at any part of the litigation, proofs being deficient, exact from the parties by his office an oath to tell the truth. And by the same reasoning the same applies in any cause in which sin threatens. This it says according to Panormitanus.

The same, to the Archdeacon and Master G., Canon of Toul.

We have learned from your letters that, in the cause concerning usury committed to you by the Apostolic See for G., *a knight of Rossuel,* against E., *a knight of Épinal in the Diocese of Toul,* the quantity of the principal could not become clear *to you* through witnesses produced by the party of G. himself, although the obligation of the pledge was established. Hence you see it to be expedient that an oath to tell the truth be exacted from the parties, since it is held as virtually notorious from report that the aforesaid E. received the principal and more from a certain land of G. himself obligated to him by title of pledge. Therefore, lest justice succumb with the truth concealed through the lack of an oath of this kind, we command *your discretion* that, *if it is so,* you shall compel the parties by ecclesiastical censure, appeal removed, to furnish an oath of this kind.

Chapter XXXIII

Latin source headnote: If one placed in a dignity alienates the goods of the dignity, the alienation is not valid; and he himself ought to revoke it, notwithstanding an oath not to revoke it, especially if he first swore not to alienate. This it says according to the true understanding. Panormitanus.

The same, to the Archbishop of Kalocsa and his Suffragans.

Having understood some time ago that our dearest son in Christ, the illustrious King of Hungary, made certain alienations to the prejudice of his kingdom and contrary to the honor of the king, we, *desiring to counsel him concerning this with paternal affection,* direct our writings to the same king that he shall endeavor to revoke the aforesaid alienations, notwithstanding an oath, if he made any, not to revoke them, because, since he is bound, and *also* swore at his coronation, to preserve inviolate the rights of his kingdom and the honor of the crown, an oath not to revoke alienations of this kind was assuredly unlawful if he furnished it, and is therefore not at all to be observed.

Chapter XXXIV

Latin source headnote: If a woman swore that someone was her husband and lost her case because she did not prove it otherwise, permission to contract with another is neither given nor denied to her.

Gregory IX, to the Bishop of Le Mans.

To a woman who asserted at law, under an oath furnished, that a certain man had consented matrimonially to her through words of the present tense, but who had no other proofs, the man having been absolved from her claim by sentence, you ought not to give permission to contract marriage with another, lest you appear an author of perjury. Nor do we say that this is to be prohibited to her, lest perhaps, if she swore falsely, it should happen that a lawful marriage is impeded; but it is rather to be left to her own conscience.

Chapter XXXV

Latin source headnote: One who swore to observe statutes already issued and afterward, by that oath without swearing otherwise, promised to observe statutes to be issued or afterward issued is not bound by the oath to those newly issued. This it says according to the true understanding.

The same.

A cleric who swore that he would observe the statutes issued in his church, promising through the same oath faithfully to observe a statute that followed afterward, although he ought not to have

transgressed what he promised, is not bound to its observance by the obligation of the furnished oath.

Chapter XXXVI

Latin source headnote: A decisory oath in litigation tendered by a judge cannot be refused without just cause; but one tendered by a party is lawfully refused and referred back; nevertheless, in an infamous action it is not permitted to the defendant to refer it back. This it says as far as § *Certainly.* — § 1. When the claimant proves nothing, the defendant is to be absolved without any burden; but if there is a presumption for [the claimant], an oath is tendered to the defendant or to the claimant himself, after consideration of the circumstances of the persons and the cause. This it says.

The same, to Judge H.

An oath tendered by you to a party could not be refused except for a just cause, although an oath tendered in judgment by one party to another can be lawfully refused and referred back; nor is it permitted to the person convened in an infamous action to refer back an oath of this kind.

§ 1. Certainly, if the claimant has wholly failed in proof, the defendant ought to prevail even if he has furnished nothing; but if a presumption makes for the claimant, an oath can be tendered to the defendant to show his innocence, unless the judge, after inspecting the circumstances of the persons and of the cause, sees that it should be tendered to the claimant.

Title XXV: On Exceptions

Chapter I

Latin source headnote: If a witness is convicted of a crime excepted against him, or appears to have been convicted otherwise, he is repelled from testimony; but he is not punished for the crime if it does not touch the principal matter.

Celestine III.

Finally, as to the fact that objections can be made against the statements and persons of witnesses *against whom nothing was objected before their oath or depositions, after the attestations have been published, know that this has obtained by long custom in the Roman Church: that before the oath or depositions and afterward, a lawful exception* [*at law*] *can be objected against the statements and persons of witnesses. And,* if crimes are objected against witnesses concerning which they had not hitherto been accused, but which are only opposed by way of exception *by anyone,* proof *certainly* of those crimes is to be exhibited before the cause is terminated by sentence, since, as the canonical institutes declare, witnesses without any infamy, suspicion, or manifest stain are required in giving testimony. But if only [*those*] crimes concerning which at another time they were convicted or confessed are objected against witnesses, they can be repelled from testimony, because, as Pope Stephen and many other Roman Pontiffs testify, their confession is not to be believed against others unless they first prove themselves innocent. Moreover, if witnesses have been convicted of or confessed crimes objected against them solely by way of exception, they ought not to be punished by the ordinary penalty, since an accusation does not proceed against them according to the order of law. It therefore suffices if they

are repelled from giving testimony, especially where the crime objected against them does not appear to touch the cause at issue.

Chapter II

Latin source headnote: When the defendant excepts against the claimant on account of excommunication, a replication of communion does not obstruct him.

Innocent III, to the Archdeacon of Richmond.

It was asked of us on your behalf whether one who knowingly communicates with an excommunicated person in speech or prayer can repel the excommunicated person himself from his accusation when the latter replicates a communion of this kind against him. We therefore respond to your inquiry in this way: the excommunicated person himself can be removed from accusing the other, since the first is excluded from the communion of the faithful, while the second is removed only from participation in the sacraments.

Chapter III

Latin source headnote: One who has several benefices does not except against another concerning plurality. This it says. Johannes Andreae.

The same, to the Bishop of Aosta.

Since the office of ecclesiastical provision, [*to which, although unworthy, we have been called by the Lord's disposition, has, according to the word of the Apostle, established us as debtors to the wise and the unwise, it thus befits us to discuss with subtle investigation the questions brought to the notice of our apostolate, to terminate them by judgment or through reasonable settlement, and to commit for decision by others, on our authority, those that we cannot [decide] ourselves, so that no one may be able to complain in the sight of the Apostolic See that he has suffered a failure of his right, and so that we may appear, as we are bound by the care of pastoral solicitude, to judge just things and love justice.*]

For both the messengers of the chapter of Novara and the same cleric Jacob approached the Apostolic See because of the question being conducted between the beloved sons, the chapter of Novara and Jacob the cleric, concerning a prebend of the Church of Novara. And while either party was established in our presence and that of our brothers, it was alleged in our auditorium on behalf of Jacob in this way: [*that, when formerly by mandate of F., of good memory, cardinal priest of the title of Saint Marcellus, then legate of the Apostolic See, he had been invested with the first prebend then to become vacant in the Church of Novara, a stall in the choir and a place in the chapter having been assigned to him, and afterward the son of the beloved son Saxo Vulgaminus, a noble Roman citizen, had been admitted to it by authority of the Apostolic See—who suffered molestations and oppressions from the relatives of the aforesaid Jacob concerning possession and fruits of the prebend itself—at length an amicable settlement concerning those fruits intervened between Jacob himself and the aforesaid nobleman, because silence had been imposed upon Jacob himself concerning the prebend so that he could move no further question concerning it. At length it pleased C., our predecessor of good memory, after considering the labors and expenses of the aforesaid Jacob, at the prayers of certain cardinals, to confer upon him the prebend of the Church of Novara that had belonged to Master B. de Suno and to invest him with it by his own hand through a ring, strictly commanding the chapter of Novara that, notwithstanding the election that they had made concerning several persons to be assumed as canons in the Church of Novara, the constitution that they had made concerning the fruits of prebends—all of which our same predecessor had invalidated by the counsel of the brothers—and any alienation, obligation, or assignment of the*

same prebend, they should, every difficulty set aside and appeal postponed, receive Jacob himself as a brother and canon in the name of the said prebend, place him in corporal possession of the prebend itself, and assign him a stall in the choir and a place in the chapter. Otherwise, they should know that our beloved provost of Saint Gaudentius of Novara, our subdeacon, and R., canon of Gorgonzola, had been firmly commanded by our predecessor himself that they should not delay executing these things by canonical coercion, appeal postponed. We plainly perceived all these things to be contained in the letters of our same predecessor. And when the said canons passed by the apostolic mandates and commands with deaf ears, the aforesaid executors, having heard whatever was proposed on behalf of the canons and received it reduced to writing, after many admonitions and delays sought by them, having taken counsel with prudent men and decreeing that the exceptions of the canons were not to be admitted, assigned to Jacob himself, according to the tenor of the apostolic mandate, a stall in the choir and a place in the chapter; and one of the executors, namely R. de Gorgonzola, by the mandate and will of the other, placed him in corporal possession of the prebend and, after very many admonitions, bound the aforesaid canons with the bond of excommunication unless within fifteen days they obeyed the apostolic mandate, as is contained in the instruments that he exhibited to us.]

But the canons of Novara, responding on the contrary, alleged very many exceptions by which they intended in every way to repel Jacob himself from receipt of the prebend, [*saying that, through the letters that Jacob himself had obtained from the aforesaid Cardinal F., he had been invested with the prebend after an appeal had lawfully been interposed; that our aforesaid predecessor invalidated what had been done concerning him by the cardinal; and that after the annulment had been made, contrary to apostolic prohibition, he did not fear to invade the fruits of the prebend by his own authority. Moreover, he obtained the investiture of the prebend and letters of execution from our predecessor through false suggestion, because he did not disclose that he was beneficed in another church, nor did he say that for those two prebends that were vacant in the Church of Novara—one of which had belonged to Master R. and the other to Master P., now Bishop of Novara but then a canon—a priest and another who ought soon to be ordained priest had, with discretion granted to two persons before that general ordinance was made, been concordantly elected and admitted in the Church of Novara. Furthermore, many other things were proposed on either side that we did not order to be intermingled with the present letters. Therefore, wishing to preserve each person's justice unharmed, because certainty concerning the foregoing could not be given to us as was fitting, by the counsel of our brothers we determined to commit the fact itself to your fraternity; through apostolic writings*] we command that [*the parties having been summoned to your presence, unless within two months it shall lawfully be established to you that the aforesaid priest and the other who ought soon to be ordained priest were canonically elected and admitted to those two prebends before that general ordinance annulled by authority of the Apostolic See, by our authority and with the obstacle of any contradiction and appeal removed,*] *notwithstanding the other exceptions, you shall cause* Jacob himself to enjoy peaceful possession of that prebend with which he is known to have been invested by Celestine, our predecessor, *especially* since those who are established to obtain various benefices in different churches cannot oppose against him that exception, that the aforesaid Jacob possesses a benefice in another church. [*But those, etc. Given at the Lateran, on the fifth day before the Nones of March, 1198.*]

Chapter IV

Latin source headnote: A judge ought to establish a term for proposing all dilatory exceptions, after which he will not hear one making an exception, except in the three cases excepted here.

The same, to the Bishop of Ely.

The pastoral—(*And below:* [*cf. c. 28, On the Office of a Delegated Judge, I.29.*]) *Moreover,* because termination of causes is sometimes maliciously prolonged through dilatory exceptions, responding to your inquiry, we decree that all dilatory exceptions be proposed within a certain time to be assigned by the judge, in such a way that, if the parties thereafter wish to oppose any exceptions concerning which they had not made protest, they shall in no way be heard, unless perhaps one newly belonging to them has arisen, or the person who wishes to oppose it makes faith by oath that he afterward came to knowledge of it. *We establish, etc.* (*cf. c. 14, On Judgments, II.1.*) [*Given at Rome at Saint Peter's, on the fourteenth day before the Kalends of January, 1204.*]

Chapter V

Latin source headnote: An excommunicated person can make an exception, appeal, and make every defense; but he cannot bring a counterclaim.

The same, to the Monks of Farfa.

When a question was being conducted before you by our delegation concerning damages and other matters between *the beloved sons,* the prior and convent of Argenteuil, on one side, and the nobleman S. de Mauléon of the Diocese of Poitiers on the other, and the proctor of that nobleman wished to decline your judgment because he held two of you suspect, the proctor of the monastery alleged that the benefit of an exception of this kind was forbidden to the party of the same nobleman because he was bound by the bond of excommunication. *For since an excommunicated person, lest he receive an advantage from contumacy, can be convened, if he could have free recourse to exceptions, that which was introduced in his disfavor would very often be drawn to his favor. Hence you sought to be instructed by the oracle of the Apostolic See how you ought to proceed in this article of doubt. To this* we have determined to respond to your inquiry that lawful defense in judgment is reserved to the aforesaid nobleman, and especially recusation of a judge, since it is dangerous to litigate before a suspect judge, and the Apostolic See does not knowingly commit a cause to suspect judges. Hence, in such matters the favor of the excommunicated person is not considered, but the equity of the person judging, since judgment ought not to limp, and it appears sufficiently absurd if, while the claimant attacks, an opportunity for defense is denied to the defendant, because in this way one who ought to be absolved would often be condemned. Furthermore, since a just sentence is not to be denied to an excommunicated person when he exists in a cause of absolution, nor ought the remedy of appeal to be forbidden to him if he is condemned contrary to justice, we do not see by what reason other lawful supports should be withdrawn from him in one and the same matter. But we do not think thus concerning a counterclaim, lest that which is sustained as a remedy of defense be extended to material for attack.

Chapter VI

Latin source headnote: One who makes an exception is not seen to confess the things included in the exception, and an exception of falsity can be opposed even after sentence.

The same, to the Monks of Farfa.

When our venerable brother I., Bishop of Sabina, sought before our beloved sons R., cardinal priest of the title of Saint Anastasia, and P., cardinal deacon of Saint Lucia *in Septisolio,* whom we granted as auditors to him and R., your proctor, the Church of Saint Vitus [*of Granica*] with its possessions and [*its*] appurtenances, asserting that it belonged to him in spiritual and temporal matters, the same

[*proctor,*] before the intention of the *same* bishop had yet been established, responded prematurely that, even if the said church had formerly been subject to the Church of Sabina, nevertheless the bishop could not claim it, since the Monastery of Farfa held it by reason of an exchange. To prove this he exhibited a certain instrument in which it appeared prima facie to be contained that Bishop Theodosius, with the assent of his priests, determined that the aforesaid Church of Saint Vitus should be granted in exchange to your monastery for certain churches and other property.

To these things [*however*] the aforementioned bishop proposed that his intention had been established through a response of this kind. For since your party responded that it held the said church by an exchange made by the Bishop of Sabina, *which it also endeavored to prove by a public instrument,* it appeared by consequence to confess that it believed that the said church belonged to the Church of Sabina at the time of the exchange, since exchange is numbered among contracts of good faith and cannot lawfully be celebrated with anyone other than the owner or one who was held in the place of the owner. *He added that, although he wished to stand by a confession* [*of this kind*] *insofar as it appeared to act against you, nevertheless he did not at all admit against himself an instrument of this kind, which is known to be supported neither by the authority of a notary nor by the subscription of witnesses.*

But to this your party responded that, since the proctor objected to it by way of exception, he was not seen to have confessed the intention of the adverse party, because, according to the lawful sanctions, one who uses an exception is not judged to confess the intention of the adversary against whom the action is brought. It added that, even if at the time of the exchange the Monastery of Farfa believed that the said Church of Saint Vitus belonged to the Church of Sabina, nevertheless the aforesaid proctor could afterward have informed his belief in such a way from certain causes or probable conjectures that [*now*] *he believed the same church not to have belonged to the Church of Sabina at that time.*

Furthermore, in order to prove that the already-mentioned church belonged to him in temporal matters, the aforementioned bishop introduced certain witnesses through whom he endeavored to show that the bishops of Sabina had rather long possessed both the said church and its mills, lands, and other goods, freely disposing of them at the pleasure of their will. [*Certain witnesses were also produced by your party to prove prescription; through them your proctor asserted that it was sufficiently shown that for ninety years your monastery had possessed the same church with its mills and other goods in peace. But to this the party of the bishop responded that, although certain witnesses appeared to depose concerning ninety years, nevertheless, according to the order of law, there ought to be subtracted from the computation the periods of schisms known to have intervened in the times of Innocent and Alexander, Roman Pontiffs of good memory, and, by our special indulgence granted to the aforementioned bishop, the time of Conrad, formerly Bishop of Sabina, when, on account of his absence—since he exercised pastoral care in the Church of Mainz—and the negligence of those to whom care of the bishopric of Sabina had at different times been committed, the rights of that bishopric were neglected; since we determined that the same bishop was to be restored, as regards defense of the rights of the bishopric of Sabina, to the condition that it had when the same Conrad received the prelacy of the Church of Sabina, the remaining time without doubt did not at all reach the limit of lawful prescription.*]

Therefore, after deliberation with our brothers concerning these and other matters proposed before the aforesaid cardinals, we understood that the aforesaid bishop had not at all established his intention through the depositions of witnesses or the response of the aforesaid proctor, because, *as was premised,* one who objects an exception is not understood to have confessed the intention of the adverse party; nor [*even*] through the instrument exhibited by the opposing side, since in it Bishop Theodosius, by

whom the exchange is proposed to have been made, is not called Bishop of Sabina, although in the transcript that the proctor used "of Sabina" had been appended through the vice of falsity. Although the person who falsified the transcript of that instrument exceeded greatly, nevertheless, because the delict of a person ought not to redound to the damage of the church, and an exception of falsity can be cast forth not only before sentence but even afterward—since a sentence rendered under pretext of false instruments can, when the truth has been discovered, be retracted within the space of twenty years—we do not will prejudice to be generated against your monastery through it.

But because it was established to us that the aforesaid Church of Saint Vitus was situated in the Diocese of Sabina, we adjudged to the same bishop episcopal right in all [*spiritual*] matters in it, excepting only those things known to have been withdrawn from him through authentic writings, since it was in no way proved to be exempt through privilege or lawful prescription. But because the said bishop, who claimed the same church [*for himself as to temporal matters,*] did not show himself fortified [*concerning this*] by lawful prescription, although he proved that a Bishop of Sabina possessed the goods of the same church for some time, we determined by sentence that you were to be absolved from the claim of the bishop as to the temporal matters of the same church. [*Let no one therefore, etc. Given at Viterbo, on the second day before the Nones of August, in the twelfth year, 1206.*]

Chapter VII

Latin source headnote: If an exception excluding jurisdiction, on account of which an appeal was made, is proved true, the judge of appeal ought not to take cognizance of the principal matter, but to stay proceedings. This it says on the understanding that these were judges of appeal, and it is a notable understanding. Panormitanus.

Honorius III, to the Abbots of Saint-Hubert and Saint Martin of Liège.

Formerly *it was intimated to our ears that, when Pope Innocent, our predecessor of happy memory, had commanded our venerable brother the Archbishop of Trier to cause the amicable settlement entered into between the noblemen L., Count of Loon, and W. of Holland, crusaders of the Diocese of Utrecht, concerning the abduction of the noblewoman, wife of the same count, lands, and other property to be observed, and the said W. endeavored to go against the aforesaid settlement and turned himself to the evasion of appeal, the same archbishop, not deferring to his appeal, which he decreed to be frivolous, promulgated against the aforesaid W.—who was otherwise bound by the bond of excommunication—a sentence of excommunication specifically on account of the aforesaid settlement, and a sentence of interdict against his land. And when afterward the beloved son G., proctor of the said count, obtained our letters to you concerning execution of those sentences, and H., proctor of the aforesaid W., publicly contradicted them in the hearing, our venerable brother P., Bishop of Albano, and our beloved son R., cardinal deacon of Saint Mary in Cosmedin, whom we appointed as auditors for the aforesaid proctors, because it was manifestly established through the things proposed by them before the auditors that the said W. was bound by the bond of excommunication, decreed by sentence that the proctor of the same W. was not to be admitted to obtain letters or to contradict, and released the letters that the proctor of the said count had obtained to you. We indeed, at the insistence of the proctor of the often-mentioned count, who feared the cunning of the other party, commanded you that, proceeding in the matter committed to you according to the form expressed in our aforesaid letters, reason going before, you should decree that any letters that it might happen were obtained from us by surreption concerning the foregoing on behalf of W., to the prejudice of the often-mentioned count, and that did not make full mention of the foregoing, lacked force.*

But *recently* it was proposed *before us* on behalf of the aforementioned G. that, when the letters of our aforesaid predecessor were presented to the Archbishop of Trier, the latter proposed *before him* by way of exception that he was in no way bound to respond by authority of *the letters themselves, both because the mandate had already expired upon the death of the mandator while the matter remained untouched, and also* because, *contrary to the constitution of the general council,* he was drawn into a cause more than two days' journeys outside his diocese. And because the said archbishop refused to admit this exception, *the same W.* uttered the voice of appeal to us. *But the aforesaid archbishop, having contemned his appeal, commanded our venerable brother the Bishop of Utrecht to cause the aforesaid settlement to be firmly observed through ecclesiastical censure. It was also added on behalf of the aforesaid W. that the said count, falsely claiming that the aforesaid appeal was frivolous, obtained the aforesaid letters to you while excommunicated and with the truth concealed. Wherefore it was humbly supplicated of us on behalf of W. himself that, since he, his land, and his other goods exist under the protection of the Apostolic See, we should deign mercifully to provide for him concerning this, notwithstanding the sentence that he incurred while crossing into England with Louis, since we absolved him from it. We therefore, wishing to provide for him after he had been absolved from the bond of excommunication, commanded through our letters the Abbot of Saint Lawrence in Oostbroek and his fellow judges that, if they found the matter to stand thus, after recalling as void whatever they found to have been attempted after an appeal of this kind, they should hear the cause and terminate it with its due end; otherwise they should remit the parties to your examination, condemning the appellant in lawful expenses.*

But the proctor of the adverse party responded that the same G. was in no way drawn more than two days' journeys outside his diocese, since the archbishop himself had established a term in such a place as was not more remote from him than is provided by the constitution of the general council. *The proctor of the same count also added that the often-mentioned W. was bound by another excommunication by authority of our already-mentioned predecessor, of which he made no mention at all in the letters directed to the already-mentioned Abbot of Saint Lawrence and his fellow judges. Wherefore the proctor of the often-mentioned count petitioned that for the aforesaid causes we decree them void and empty. But because in so great a contradiction among the persons proposing the truth is not established to us,* we command your discretion that, if the proctor of the said G., *within three months after the first term assigned to him by us concerning this,* shall be able to prove the exception that he proposed before the often-mentioned archbishop—namely, *that the mandate expired while the matter remained untouched, or* that he was drawn into a cause more than two days' journeys away, contrary to the constitution of the general council, *or even that the Count of Loon himself was excommunicated at the time when he obtained our letters to you, as the proctor of W. himself explained before us*—you, decreeing that the appeal of the said G. was lawful, shall take care to stay proceedings in the matter. *But if the proctor of the often-mentioned W. fails in proof of the said exceptions, or if the count himself sufficiently proves that the said W., at the time the letters were obtained for him, was bound by an excommunication other than that which he incurred when crossing into England, you shall proceed in the matter itself, appeal postponed, according to the form delivered to you, notwithstanding the letters obtained for the Abbot of Saint Lawrence and his fellow judges, or any letters that may appear to have been obtained from the Apostolic See with the tenor of the present letters suppressed.*

Chapter VIII

Latin source headnote: For the defense of his church, someone can oppose an exception of excommunication, perjury, or another lawful exception, and cannot be repelled through a replication of excommunication or perjury.

The same, to the Archdeacon of Translig., the Official, and I., Canon of Tours.

The beloved sons S., P., and G., canons of the Church of Saint Mary of Graçay, showed by a petition transmitted to us that, when M., a canon of the same church *in the Diocese of Bourges,* drew them into a cause before *the dean and Master Hervé, Canon of Auxerre,* delegated by us, concerning the fact that they opposed the election made by certain canons of Graçay of him as prior of the aforesaid church, *and* they proposed *before the aforesaid judges* that the said M. ought not to be heard because he was excommunicated and entangled in the crime of perjury. And when the said M., objecting by way of exception and replication that the aforesaid G. and P. had committed perjury and that S. was excommunicated, endeavored *through this* to refute their exception, their proctor proposed that, *although the judges had assigned the aforesaid M. a term to prove his replication,* nevertheless his proof concerning this ought not to be received, because, even if the perjury objected against the aforesaid canons were proved, *nevertheless* they were not on that account to be repelled from defense of their church. He also added that the excommunication of the aforesaid S. could not be replicated *with effect* against the excommunication objected by way of exception against the said M., *both because S. showed this by the letters of his absolution, and* because the exception opposed and proved against M. himself would repel him from acting, while the replication would by no means repel the often-mentioned S. from defending, even if it were proved. *Wherefore he petitioned that, omitting proofs of a replication of this kind—in which, even if it were proved, labor would, as was shown above, be consumed in vain—they should receive the proofs that they should determine to produce to prove the matters objected against M. himself.* But the judges themselves ruled interlocutorily that they would first receive proofs concerning the aforesaid replication, on account of which an appeal was made to our hearing. Wherefore, we command *your discretion* that, if the matter stands thus, after recalling as void, etc.

Chapter IX

Latin source headnote: If the ordering of a church is retarded through an exception of suspension against which nullity is replicated, absolution is made as a precaution.

Gregory IX, to I. and M., Canons of Prague.

Of the Apostolic See—(*And below:*) Indeed, while you were established at the Apostolic See, certain sentences of suspension and removal from benefices were objected against you by way of exception. Although you proposed that you could prove through suitable witnesses and instruments that they were null, nevertheless, lest it happen that the ordering of the Church of Prague, on account of which you had come, be retarded by the obstacle of an objection of this kind, we relaxed the sentences themselves as a precaution. *But because, etc.* [*cf. c. 9, On Excommunicated Clerics, V.27. Given on the fourth day before the Ides of May, in the year 1227.*]

Chapter X

Latin source headnote: Notwithstanding an exception of excommunication, a rescript obtained in a cause of appeal is valid, even though it makes no mention of an excommunication rendered after an appeal from a grievance. This it says, and according to this it is a notable and singular case, from which perhaps one rule could be gathered: that it is not necessary to make mention in a rescript of something introduced after an appeal, even from an interlocutory [sentence]. Panormitanus.

The same, to the Dean of Lincoln.

The beloved daughters in Christ, the prioress and convent of Campsey, took care to signify to us that, when a question was being conducted between them on one side and the prior and convent of Bucklesham on the other concerning certain tithes and other things for which they were convened by the latter before the Abbot of Saint Benedict and his colleagues by apostolic authority, and they appealed to us from a sufficient grievance and sent their messenger to prosecute the appeal, the aforesaid judges afterward rendered a sentence of excommunication against them. Therefore, when our letters concerning the aforesaid appeal, making no mention of the excommunication, had been obtained through the same messenger for the Prior of Angles and his fellow judges, the adverse party, proposing that it had appealed because those judges denied admission of the exception of the aforesaid excommunication proposed against them by the same party, obtained our letters concerning this for the Prior of Yarmouth and his fellow judges. Before them it was proposed by way of exception on behalf of the women that, since the said sentence had been rendered after a lawful appeal and the aid of defense is known to belong to every excommunicated person, the aforementioned judges were unwilling to admit the exception of the contrary party, just as they ought not. But when the said Prior of Yarmouth and his fellow judges did not receive an exception of this kind from them, they appealed to our hearing. Wherefore we command that, if it is so, after recalling to its due state whatever you find to have been attempted after an appeal of this kind, you shall proceed in the same matter, reason going before, according to the tenor of our former mandate directed to the aforesaid Prior of Yarmouth and his fellow judges.

Chapter XI

Latin source headnote: Even an original claimant ought not to be repelled from prosecution of an appeal through an exception of excommunication. This it says, and it is a singular case insofar as it speaks of a claimant.

The same, to the Abbot of Saint Saviour of Pavia and the Provost of Vercelli.

The chapter of Tornacens. signified to us that, when they had elected P. as their archpriest, the Archbishop of Milan, refusing to confirm the election presented to him, instituted a certain cleric Zepus as archpriest of the aforesaid church. Wherefore, when they appealed to the Apostolic See, we are said to have committed the cause itself concerning these matters to the Provost of Saint Stephen, who, confirming their election and pronouncing that the right of electing belonged to the chapter itself, absolved the adverse party from their claim. When the parties appealed from this sentence to the Apostolic See, they obtained that the cause itself be committed to you. But when an exception of excommunication was opposed by the other party against the aforementioned chapter, you, attending less providently to the fact that no one ought to be excluded from prosecution of an appeal under pretext of an opposed excommunication, since every lawful defense is reserved in judgment to an excommunicated person, wrongly decreed that the adverse party was not to be compelled to respond to them; on account of this the said chapter appealed to our hearing. (*And below:*) We command that, if it is so, notwithstanding an exception of this kind, you shall proceed in the same matter.

Chapter XII

Latin source headnote: A defendant who objects excommunication against a claimant at any part of the litigation is heard; and, if he maliciously delayed, he is condemned in expenses; and granted that he does not except, the judge himself will repel a publicly excommunicated person.

The same.

A defendant who knowingly omits an exception of excommunication when dilatory exceptions are proposed is not prohibited from opposing it at any part of the litigation; this is to be observed specially in this exception, lest anyone be compelled to communicate with an excommunicated person to the peril of his soul. But if he omitted it so that the claimant might be wearied by labors and expenses, he is to be condemned in lawful expenses. Moreover, one publicly excommunicated is nevertheless to be repelled by the office of the judge even if an exception of this kind is not opposed.

Chapter XIII

Latin source headnote: An exception of a matter adjudged does not belong to a defendant absolved because he did not possess [the thing].

The same.

When your adversary has been absolved by the judge because at the time the litigation was initiated he had ceased without fraud to possess the thing sought from him, if he now possesses it, an exception of a matter adjudged does not obstruct you when you seek it anew.

Chapter XIV

Latin source headnote: A rescript obtained by an excommunicated person concerning prosecution of an appeal is valid, even though he made no mention of the excommunication.

The same.

We have decreed that our venerable brother the Archbishop of Narbonne, who, appealing from the judges to the Apostolic See because of a sufficient grievance, brought back to you our letters concerning his appeal, is to be admitted to prosecute the aforesaid appeal through the same letters, even if, at the time the rescript was obtained, he was bound by the bond of excommunication for other causes of which no mention is made therein, because it would profit an excommunicated person nothing to appeal if he could not prosecute his appeal and obtain letters concerning it.

Title XXVI: On Prescriptions

Chapter I

Latin source headnote: A bishop prescribes in three years against another bishop a place converted to the faith by himself; but while the church is vacant or is in schism, prescription does not run against it.

From the African Council.

It was resolved that, if anyone *after the laws* has converted some place to Catholic unity, if he has held it for three years without anyone seeking it back, it shall no longer be sought back from him; provided, nevertheless, that during those three years there was a bishop who could seek it back and remained silent, [*he shall suffer prejudice.*] But if there was none, prejudice shall not be done to the mother church; rather, when the place has received a bishop, *which it did not have,* it shall be permitted to seek it back within three years from that day. Likewise, if a bishop has been converted to the Catholic faith from the party of Donatus, the prescribed time shall not prejudice him; but from the

day on which he was converted, he shall have for three years the power to seek back a place that belonged to that see.

Chapter II

Latin source headnote: It is summarized in two ways. First thus: the silence of a prelate does not harm the church until prescription is completed. Second thus: prescription does not run in invaded property. Johannes Andreae.

From the Register of Gregory, to Patricia of Italy.

Nothing profits *most glorious health and beauty on the surface of the body if a wound lies hidden within. And that discord to which outward peace furnishes attendance is the more to be guarded against. But as to that which Your Excellency earnestly strives to recall to our memory in the aforesaid letters, know that it was written to you:* we will to determine nothing with you concerning causes of the poor with scandal or forensic clamor. *We remember that we wrote this also to you, and we know that, with the Lord helping, we restrain even ourselves from the strife of causes with ecclesiastical moderation and, according to that apostolic meaning, sustain with joy the plundering of our goods.* But we believe that you know this: our silence and patience will not create prejudice in the property of the poor against the pontiffs future after me. [*Hence we also, fulfilling, etc.*]

Chapter III

Latin source headnote: Through quiet and good-faith possession of thirty years, a church prescribes a private person's thing. This it says insofar as it speaks of a church prescribing actively, and this understanding is to be held.

Gregory.

The sanctions of the holy Fathers, establishing [this] *and the human laws,* have confirmed it irrefragably, and we, *in the present council with all who are with us,* confirm it irrefragably: that all possessions belonging to the individual provinces of our brothers, which have been possessed by them quietly and in good faith for thirty years without synodal proclamation, shall be held perpetually, *and permission to be heard shall be granted to no adversary. But if some presumptuous person shall have deviated with rash mouth, because he acts against the statutes of the holy Fathers, let him be indissolubly bound by the bonds of excommunication and wholly banished from the Church and alien from the communion of the brothers.*

Chapter IV

Latin source headnote: The fourth part of tithes and funeral offerings is prescribed against a bishop if it is not paid for a space of forty years and the cathedral church was not vacant in the meantime.

Alexander III, to the Archbishop of Salerno.

As to the fourth part *indeed* of a tithe and the offering of the dead, a cleric appears able to defend himself from the claim of a bishop by prescription of forty years, unless perhaps in the meantime the pastoral see had lacked a pastor who ought to have exacted the rights of his church. For the Roman Church does not admit a thirty-year prescription against a church.

Chapter V

Latin source headnote: A possessor in bad faith does not prescribe.

The same.

It is to be guarded against with vigilant study, *since the supreme measure of divine judgment has from the beginning decreed that one relinquish one's own things and not seek another's,* lest we be possessors in bad faith of another's estates *and property,* [*especially*] *ecclesiastical property,* since no ancient possession of days *by divine law* aids any possessor in bad faith unless he comes to his senses after he learns that he possesses another's property, since *even at law* he cannot be called a possessor in good faith. For the Ephesian legislator, *the paternal uncle of Origen,* first imposed the force of law upon thirty- or forty-year prescription solely to avoid the sluggishness of the wretched and the error and confusion of a long time. But it has pleased us that it shall have no force either in known matters or *in matters* lying hidden.

Chapter VI

Latin source headnote: One church prescribes tithes in the parish of another through a space of forty years.

The same, to the Bishop of Maurienne.

It reached our ears *upon your report* that two churches *under your examination* rather frequently litigated concerning tithes that one of them possessed in the parish of the other for forty years, *and through this it thinks the latter's action extinguished; but the other, wishing to evict them by parochial right, proposes that prescription ought not to obstruct it. Therefore, your fraternity considered that we should be consulted as to what the law is in this case.* Let it *therefore* become known to your fraternity by the tenor of the present letters that, by *divine and human* law, the condition of the possessor is better, because forty-year prescription wholly excludes every action.

Chapter VII

Latin source headnote: Laymen cannot possess spiritual things; therefore, by consequence, neither can they prescribe them. This it says, and it is alleged daily.

The same, to the Bishop of Parma.

The cause being conducted between *our beloved son I.,* Archdeacon of Reggio, and the nobleman G. *de Baiso* concerning tithes *that the same G. and his men are known to have in the court of Fogliano, we commit to your experience, in which we have full confidence, to be heard and terminated by means of justice.* Therefore, *by commanding through apostolic writings,* we order your fraternity that *you shall summon the parties before your presence and, the arguments having been heard and diligently learned, contradiction and appeal ceasing,* decide the cause itself with its due end, notwithstanding prescription of time or a grant of an ecclesiastical or secular person, if the same G. should wish to oppose it; because, since laymen cannot retain tithes, they can prescribe them by no reasoning.

Chapter VIII

Latin source headnote: If interruption is opposed against a prescription of forty years, which alone runs against a church, each party will prove [its claim].

The same.

But we will you to know and *firmly* hold this: against churches the Roman Church does not admit a prescription shorter than forty years, although certain canons approve a thirty-year prescription; and a church can defend itself against a church by prescription of forty years concerning a thing that it is known to have possessed undisturbed for forty years. But if a question concerning prescription *and interruption* has been moved between the parties, witnesses ought to be received from either party; and, if interruption has been proved, the prescription will not bind.

Chapter IX

Latin source headnote: Boundaries of ecclesiastical estates are prescribed through a space of forty years.

The same.

Because, upon the indication of Abbot C. *of the Monastery of Saint Peter,* [*which is situated in a place called Baia,*] we have learned that a *grave* question concerning [*certain*] boundaries has arisen between him and *John,* Abbot *of the Monastery* of Saint Lucia [*situated in the city of Syracuse,*] *lest the contention itself be prolonged between them,* we have provided that it be terminated by the determination of a land surveyor. [*And therefore we wrote to Fantinus the defensor that he ought to send there to your fraternity John the land surveyor, who set out from the city of Rome for Palermo.*] We therefore exhort you that, approaching *with him* the places concerning which there is contention [*and either party being established nearby,*] you shall cause it to be terminated in your presence, preserving for either party a prescription of only forty years. [*But whatever, etc.*]

Chapter X

Latin source headnote: Prescription does not run in time of hostility.

Lucius III.

From the complaint transmitted *to us* by the abbot and monks of Haben., we learned that, although the Church of Camenon belongs to their right, and the people of Sibin. and Vinto. are parishioners of that church, the clerics who held the aforesaid churches *from N. and W.* gradually withdrew every parochial right except the right of burial from the mother church. *For, retaining the tithes and other revenues for themselves, they permitted only the bodies of the dead to be carried to the aforesaid church; their successors are said to contend to take away the aforesaid parochial rights. Through apostolic writings* we command your discretion that, *if you learn that what is asserted rests upon truth, appeal removed,* you shall cause the aforesaid tithes and offerings, together with other revenues, to be restored to the aforementioned mother church, prescription not running during time of hostility, *and shall henceforth restrain the aforesaid clerics from receiving them by ecclesiastical censure.*

Chapter XI

Latin source headnote: Procurations that are owed to legates and messengers of the Apostolic See cannot be prescribed.

Innocent III, to the Abbot of Ceneda.

Coming to our presence, *the beloved sons,* the Provost of Saint Nazarius and A., Canon of Saint Stephen, syndics and proctors of *the beloved sons,* the primicerius and clerics of Milan, complained gravely *to us* concerning the ordinaries of the greater church that, although they themselves devoutly receive and furnish procuration for the legates and messengers of the Apostolic See, the said ordinaries refuse both to furnish procuration for them *and* to impart aid for expenses to those furnishing it. *Hence they complained that grave prejudice was generated against the clerics of Milan. For since it often happens that our messengers and legates make passage through that city, the fewer there are in furnishing their procurations, the more heavily those furnishing them are burdened; and the more persons among whom the burden of procuration would be divided, the more easily it would be borne by those furnishing it. Since we do not cease continually to keep watch for those ordinaries and others, and to minister spiritual things to all as the Lord shall grant, it does not appear why they strive to defend themselves in a special right of this kind, especially since the Apostle also says, "If we sow spiritual things for you, it is no great thing if we reap your carnal things," and our daily insistence is the continual solicitude of all the churches, as those present and remote alike know more fully.* But, willing that what presses upon all be borne together by all, *by commanding through apostolic writings,* we order your discretion that, unless the said ordinaries show through a special privilege of the Apostolic See that they are immune from furnishing procurations, even if for the longest time they have not furnished the service of procuration—since prescription cannot claim a place for itself in such matters—you shall decree, *appeal removed,* that they are bound to undertake the burden of procuration in due order. [*If indeed, etc. Given at the Lateran, on the seventh day before the Kalends of March, 1199.*]

Chapter XII

Latin source headnote: A subject does not prescribe obedience against a prelate.

The same, to the Priors of Costa and Saint Donatus.

Since it is not permitted for the members to withdraw from the head, we cannot sufficiently marvel that, as was intimated to us upon the report of *our venerable brother* the Archbishop of Braga, although your churches are situated in his diocese, nevertheless you, *putting forward no privilege of exemption,* contumaciously refuse to obey him as your bishop. Therefore, *since to resist is the crime of divination and to be unwilling to acquiesce is the wickedness of idolatry, unwilling to sustain that subjects do not obey their prelates as they are bound, by the common counsel of our brothers and through apostolic writings* we command *and strictly order in virtue of obedience* that henceforth, *without any contradiction,* you shall furnish the aforesaid archbishop and the Church of Braga the obedience and reverence owed, as the other clerics of his diocese do, notwithstanding prescription of time. *Otherwise, we shall hold as ratified the sentence that he shall reasonably render against you or your churches on this account and, with God as author, shall cause it to be inviolably observed.* [*Given at the Lateran, on the twelfth day before the Kalends of August, 1199.*]

Chapter XIII

Latin source headnote: Concerning rights belonging to the Roman Church, only a hundred-year prescription runs.

The same, to the Nobleman Matafelon.

It reached the hearing of our apostolate *upon your complaint that the castellan of the same castle denied returning certain rights from the castle of Palazzuolo, granted to you by Pope Alexander, our predecessor of happy*

memory. Furthermore, we caused you and the beloved son Leo, consul of the castle itself, who were established in our presence on this account, to be heard diligently. It was *indeed* proposed on your behalf that *the aforesaid* Pope Alexander, our predecessor, granted to you in the *already-mentioned* castle of Palazzuolo each year forty solidi of Pavia denarii, which the Roman Church was accustomed to receive there annually; and also the meals, banns, pleas, forfeitures, and all rights that the Apostolic See had there. But the castellan of the same castle most steadfastly asserted that they were owed to you for no reason. To prove this, you introduced the privilege of the aforesaid Pope, *in which it is expressly contained that all the aforesaid things were granted to you by him with the common counsel of the brothers,* and the census book of the Roman Church, *in which it is similarly contained, as the consul himself with another fellow castellan acknowledged in our presence, that the people of Palazzuolo are bound to pay each year to the Roman Church forty solidi of Pavia money.* You also endeavored to prove this through witnesses who said that they had seen the aforesaid census paid to the messengers of the Roman Pontiffs for the last fifty years. *Moreover, you endeavored in many ways to prove other articles through many witnesses.*

But among other things it was responded in opposition that neither the *Pope Alexander's* privilege nor the census book brought you any advantage, since you had not used the *Alexander's* privilege for a space of thirty years, and the census book was suspect because it had not been received in our chamber *but in that of Master G., cardinal deacon of Saint Adrian at that time,* and the scriniarius had written the statements of the witnesses otherwise than they had spoken them. We therefore, *the attestations, allegations, arguments, and instruments of either party having been diligently heard and learned,* attending more to the authority of the privilege than to the depositions of witnesses, considering also the census book, which we did not hold suspect although it was found not in our chamber but in that of the Cardinal of Saint Adrian, who had received it from the chamber of Blessed Peter when he was chamberlain, and not believing that the scriniarius, since he had sworn to execute his office faithfully, had written anything other than what was said by the witnesses, considering moreover what is far stronger, that the matter itself principally touched the Roman Church, against which no prescription runs except one of a hundred years, *by the counsel of our brothers* condemned the adverse party in the payment of the aforesaid census, *namely forty solidi of Pavia money,* and the other things sought, *firmly* enjoining it *by apostolic authority* that it shall pay to you without difficulty—not as to you, but as to the Roman Church, by whose authority you ought to receive it and of which, on account of the aforesaid benefices, you also exist as vassal—*what is established to have been adjudged by us with the common counsel of our brothers.*

Chapter XIV

Latin source headnote: From the hundred-year prescription, which alone runs against the Roman Church, the periods of schisms are to be deducted.

The same, to the Abbots Hel. and Gu.

Since *by other letters we commanded you that, in the cause known to be conducted between the Church of Hildesheim on one side and the Church of Gandersheim and the Roman Church on the other, you ought to receive witnesses to prove prescription, by notification of the present letters we have determined to declare to you that, after prescription against the often-mentioned monastery and its liberty is said to have begun, the rupture of three schisms against the Roman Church intervened.* Therefore, although it has been established by both legal and canonical definition that against the *holy* Roman Church, which rejoices in a special privilege, no

prescription except one of a hundred years can claim a place for itself, nevertheless we do not will the periods of intervening schisms, which according to the order of law impede the course of prescription, to be computed in any way, but, diligent consideration having been applied, to be deducted from the computation itself. [*Given at Ferentino, on the fifteenth day before the Kalends of July, in the ninth year, 1206.*]

Chapter XV

Latin source headnote: An inferior prelate can prescribe the whole episcopal right in certain churches of his diocese; nevertheless, the time during which the cathedral church was vacant is subtracted from the prescription.

The same, to the Bishops of Ely and Rochester.

Having heard and understood the merits of the cause being conducted between *our venerable brother* the Bishop of Worcester and *the beloved son* the Abbot of Evesham concerning the churches *situated* in the Vale of Evesham, which the bishop asserts belong to him by diocesan law, while the abbot [asserts] that they are altogether exempt from his jurisdiction, *we learned clearly that these churches were not withdrawn from episcopal jurisdiction through privileges of the Roman Pontiffs, unless perhaps the Vale of Evesham is that place which, having been endowed with liberty by two kings, namely Cenred and Offa, Pope Constantine of good memory endowed with liberty, as is contained in his privileges.* But they are proved through witnesses to have been possessed with full right by the Abbots of Evesham for so long a time that they appear lawfully to have prescribed episcopal right in them, *unless perhaps in the meantime the Church of Worcester was vacant for so great a period that, the time of vacancy being subtracted, the prescription is not at all completed.* [*Although the cause has been concluded on either side, nevertheless, because either party lost proof that it asserts was necessary, we, considering that either church discharges the function of a minor, after equity was weighed restored either against the other for proving the omitted argument, lest either be injured by grave loss on account of negligence of this kind.*]

Wherefore, *through apostolic writings,* we command your discretion that, after inspecting the privileges of Kings Cenred and Offa, which the abbot asserts that he has concerning the aforesaid liberty, if through them it shall be established that the Vale of Evesham is that place which Celestine, our predecessor, endowed with liberty, you shall absolve *the Evesham* abbot from the claim of *the Worcester* bishop concerning the aforementioned churches and, adjudging that they are subject with full right to the abbot, shall impose *perpetual* silence upon the bishop concerning them. But if the abbot fails in this proof, you shall hear the proofs concerning the time during which the episcopal see was vacant within the forty years; and, if it is established to have been vacant for so long a time that, it having been subtracted, a forty-year prescription is not completed, you shall adjudge episcopal right in those churches to the bishop and impose perpetual silence upon the abbot concerning it. But if the bishop does not prove an exception of this kind, nevertheless, because he proved interruption concerning the Pentecostal procession in the village and Church of Morton, the reception and procuration of the archdeacon, and also payment of Peter's Pence in the Vale of Evesham, and also concerning cognizance of matrimonial causes, the suspension of a chaplain in the aforesaid village of Morton, and the interdict of the chapels in the aforesaid village of Evesham, you shall adjudge episcopal right concerning these matters to him—provided, nevertheless, that concerning suspension and an interdict of this kind, interruption was made within forty years—imposing silence upon him in the

other matters that the abbot is proved to have prescribed. [*But if perhaps they are unwilling, etc. Given on the third day before the Nones of February, 1205.*]

Chapter XVI

Latin source headnote: A subject cannot prescribe against a superior either visitation or the procuration owed by reason of visitation in himself, although another could prescribe both in the person of another.

The same, to the Bishop of Paris.

When *our venerable brother* the Archbishop of Sens was visiting the Province of Sens by the obligation of his office, making passage through the Diocese of Paris, he had need to turn aside to the churches of the Abbot of Saint-Magloire, the Prior of Castres, and certain others of the same diocese. When he sought from them the procuration owed to him, they inhumanly denied the *exacted* procuration, *altogether contemning to pay it,* alleging only this in defense of their denial: that they did not remember having paid a procuration of this kind to the predecessors of the same archbishop, *nor* that it had ever been sought from them. *But the same archbishop, on account of the procuration less than reasonably denied to him, suspended them from execution of their offices by authority of a rescript that he had obtained from the Apostolic See concerning this; afterward, because they did not observe the sentence of suspension, he bound them with the bond of excommunication. We perceived all this to be contained in the letters of the archbishop himself, who sought that the same sentence be confirmed by apostolic authority.*

We therefore, considering their foregoing allegation altogether null—since it was impossible to prescribe against a procuration owed by reason of visitation, just as prescription can in no manner run against visitation itself, even if another could prescribe both against him—[*by commanding*] *through apostolic writings,* we order your fraternity that you shall cause the sentence that the aforementioned archbishop rendered against contemners of this kind, *both by authority of our rescript and* by the ancient custom of the metropolis, to be *inviolably* observed *throughout your diocese* until worthy satisfaction, because *according to divine law an ox treading grain is not to have its mouth closed, and,* according to the Apostle, "if one sows spiritual things, it is no great thing if he reaps carnal things, since no one is compelled to serve as a soldier at his own expense." For if they wish to object and prove anything other than what was alleged above against the intention of the *often-mentioned* archbishop, we shall cause justice to be exhibited to them. [*You also, etc. Given at the Lateran, on the fourth day before the Kalends of December, in the fifth year of our pontificate, 1202.*]

Chapter XVII

Latin source headnote: One who possesses in another's name does not prescribe; nor even does one who possesses in his own name unless he has good faith and a just title, if a presumption is against him. This it says according to Johannes Andreae, with the addition supplied by Panormitanus.

The same, to the Archbishop of Pisa.

If by diligent *meditation you had weighed what that ark of the tabernacle signifies, in which, at the Lord's command, the rod and manna were deposited together with the tablets, you would by no means reckon that we wrote harshly or severely to you, since in the breast of the Roman Pontiff, who by God's authority is known to preside over all prelates of the churches, there ought to be both the rod of correction and the manna of sweetness, so that with the one he may cherish the humble and devout, but with the other strike rebels and punish delinquents. Hence it is that*

wine and oil are applied to the wounds of that wounded man whom the Samaritan brought into the inn, so that, unless the wounds of delinquents are soothed by the oil of admonition and exhortation, the wine of ecclesiastical severity may follow. Therefore, although from the matters that we have premised, our admonitions and mandates having been contemned—by which we frequently endeavored to induce your fraternity to absolve our beloved son W., Margrave of Massa and Judge of Cagliari, from the oath of fealty that you caused to be furnished to you and the Church of Pisa, so that, notwithstanding it, he might swear to us and the Roman Church—we could perhaps have proceeded against you not only with severity of words but with execution of ecclesiastical discipline, since the Judicate of Cagliari belongs to the right and property of Blessed Peter, just as all Sardinia belongs immediately, *and nothing has been reasonably alleged on your behalf why* it was permitted to you to exact an oath of fealty for yourself or your church from the Margrave of Massa, Judge of Cagliari. (*And below:* [*cf. c. 12, On the Competent Forum, II.2.*])

But concerning the other article, you responded in this way: that from the time when you were assumed to the office of prelate, you received the oath of fealty for the Apostolic See from the judges [*of Sardinia,*] *knowing that Villanus the archbishop, your predecessor, a man of great authority and integrity who existed for a long time as a cardinal in the Roman Curia and knew its customs and statutes more fully, and all your predecessors, who were men of great authority, had thus equally held and acted by ancient custom, since nothing had hitherto been objected to you or them by the Apostolic See.* We therefore, having more fully considered *these and the other things* that *the beloved son Master Bondinus,* your messenger, wished to propose, did not understand that you or your church was supported concerning this by any right *through which you could reasonably be excused from execution of our mandate,* since you do not show authority of the Apostolic See through which you and your predecessors exacted oaths of fealty from the Judges of Cagliari, nor are you fortified by any prescription; since, according to your confession, neither the Church of Pisa nor you were in quasi-possession of the right to exact an oath of this kind, which you confess was received from those judges for the Apostolic See. Through this it is established that the Roman Church was always in quasi-possession, since the oath was exacted and furnished on its behalf through the ministry of you and your predecessors, and one is also said to possess in whose name possession is held.

But if it should be said that the oath was exacted in your name and that of your predecessors, and not in our name and that of the Roman Church, it could be inferred that the oath furnished concerning preservation of the right and honor of the Apostolic See had been violated. Hence what had knowingly been obtained contrary to an oath of this kind could not be lawfully retained, because even according to this prescription could have no place, since in prescription of ecclesiastical property good faith and a just title are required. And even if prescription could have had a place, we do not believe that a hundred-year prescription, which alone runs against the Roman Church, can be proved. [*But because, etc. Given at Rome at Saint Peter's, on the second day before the Nones of May, in the ninth year, 1206.*]

Chapter XVIII

Latin source headnote: An abbot can prescribe episcopal rights in chapels; nevertheless, he prevails only in those rights that he has prescribed. This it says as regards the title.

The same, to the Bishop of Lucca.

When formerly, brother Bishop, litigating in our presence with *the beloved sons,* the abbot and monks of Saint Saviour of Fucecchio, concerning the parish church of Salamazana and its adjacent chapels,

you claimed institution [*of clerics*] in them and other matters belonging to episcopal right, to establish your intention you principally alleged the common law, by whose authority you said that all spiritual things in the aforesaid places, which are situated in your diocese, belonged to you as diocesan bishop. You further alleged the award concerning this promulgated by *the Bishop of Pistoia of good memory* and by the archpriest and primicerius of Lucca, *who had been elected by the parties, which had been commonly approved by either party.* [*In it it is expressly contained that, after any professed religious in the same parish church has been elected as plebanus by the abbot, he shall be presented to the Bishop of Lucca to receive from him the favor of confirmation and promise to the same bishop, together with his priests, manual obedience under this form: that he shall go with his people to the synod, chapter, and also the litanies at the Church of Saint Martin; answer to the bishop in an annual procuration and concerning the fourth part of the tithes; when necessary, supply him aid; and observe his sentence of interdict rendered against the people of Fucecchio; and, if the plebanus or his priests should perhaps offend the Church of Lucca in the matters contained in the award, and the abbot, having been required once or twice, did not cause the offense to be amended within twenty days, it should be permitted to the Bishop of Lucca to judge them for that fault as his own priests.*]

But in order to refute your intention, the *aforesaid* abbot exhibited the privilege of Pope Gregory VII, our predecessor *of happy memory,* which appeared to precede the aforesaid award by much time and through which both the *Fucecchio* monastery and the aforesaid parish church and chapels appeared to have been endowed with liberty. [*For in it is contained that our already-mentioned predecessor instituted the Church of Salamazana with the adjacent chapels granted to the aforementioned monastery, so that no archbishop or bishop should dare to molest the place itself or the aforesaid parish church and chapels, or to excommunicate or even judge the priests established there by the abbot then in office, but that, existing under the protection, immunity, and judgment of the Roman Pontiff, they should take care to serve almighty God securely.*] The said abbot also used privileges of other Roman Pontiffs, *namely Urban, Paschal, Calixtus, Eugenius, Anastasius, Adrian, Alexander, and Lucius,* obtained after the award was promulgated, who appeared to grant him privileges of liberty. [*For this is found among other things in the privileges of each: "We also decree that it shall be permitted neither to any bishop or archbishop nor to their ministers to excommunicate or place under interdict the place itself"—namely the Monastery of Fucecchio—"or its monks, or the adjacent churches of Salamazana with their chapels, or the priests established there by the abbot, without the cognizance of the Roman Pontiff."*]

The said abbot further proposed that, even if the aforesaid matters belonged to you by common law, nevertheless it was established that both he and his monastery were fortified concerning them by lawful prescription. Through his own witnesses and those of your party, who by our mandate had been produced on either side before the beloved son, the Prior of Saint Fridianus of Lucca, he said that it was proved that his monastery had enjoyed peaceful possession of all the foregoing for forty years and more. He further alleged that no prejudice could have been generated against the monastery through the often-mentioned award, both because the greater and sounder part of the chapter of the same place in no way consented to the aforementioned submission to arbitration and because it was not at all proved that the authority of the Roman See, to which the monastery and churches belonged, had acceded.

To these things, however, it was responded on your behalf that faith was not to be given to the privilege of Pope Gregory, as manifestly suspect. For it was found erased in that part of itself in which the force of the question existed, namely, where mention is made of the chapels. You further proposed that the same abbot ought to receive no advantage through the other privileges, since they

appeared obtained by surreption because they make no mention of the aforesaid award, approved by the parties, which had passed into the authority of a matter adjudged. You added that you could not be repelled by the objection of prescription by the adverse party, because, although certain witnesses depose that they remember from a time of forty years and add that they saw the monastery enjoy liberty in the aforesaid places concerning those matters that belong to episcopal right, nevertheless, through depositions of this kind, faith is not made concerning continuous possession for forty years, since these two things can sufficiently concur: that the witnesses remember from a time of forty years and saw the monastery in possession of the aforesaid matters only for the last ten years.

But the other party, considering this frivolous, responded that, even if some witnesses thus use doubtful words, nevertheless there are several witnesses who openly testify that they saw the aforementioned monastery in continuous possession of all the aforesaid matters for forty years and beyond. Against this your party proposed in replication that, although forty-year prescription were established, nevertheless the time of the schism that was shown through witnesses to have intervened in the Church of Lucca ought deservedly to be subtracted from the computation. The other party responded in opposition that, although faith had been made concerning a schism that intervened, nevertheless, since it was in no way shown how long it lasted and it could have lasted for a short time, the objection of prescription could not on this account be effectively impeded, especially since prescription of forty-five years was proved through several witnesses.

We therefore, having perspicaciously understood these and the other things proposed on either side before us, because the aforesaid abbot sufficiently showed that his monastery was fortified by lawful prescription concerning the institution, destitution, and ordination of the plebanus and clerics; baptism; penance in lighter faults; burial; receipt of tithes; celebration of divine offices in both the parish church and the aforesaid chapels; excommunicating, placing under interdict, and also absolving—we determined, *by the counsel of our brothers,* that the abbot himself was to be absolved from your claim concerning the already-mentioned articles, imposing perpetual silence upon you concerning them; but concerning all other matters known to belong to episcopal right, we condemn the same abbot by sentence as regards the aforesaid parish church and chapels, according to the tenor of the award. [*Let no one therefore, etc. Given at Ferentino, on the second day before the Kalends of November, in the eleventh year of our pontificate, 1208.*]

Chapter XIX

Latin source headnote: One who, after prescription has been completed, obtains a contrary privilege and uses it renounces the prescription. If the prescription was not completed, he has bad faith and therefore does not prescribe.

The same.

Coming to our presence, *the beloved son* [*G.,*] Abbot of Saint Martin of Pannonhalma, [*showed us by his complaint that our venerable brother the Bishop of Veszprém exempted conditional persons, who furnish certain services to him, from full payment of tithes and, although he has jurisdiction over them, does not compel them by pontifical authority to pay the aforesaid tithes to him in full and to make fitting satisfaction concerning those withdrawn; and that he refuses to furnish him counsel and aid in expenses and other things against woodland people dwelling at the outermost boundaries of the aforesaid parish, who withdraw themselves from payment of tithes. Wherefore he humbly petitioned that we should deign to enjoin the same bishop by apostolic authority not to attempt*

this henceforth. He petitioned further that the same bishop should prohibit the priests of that parish from admitting to divine offices certain persons who do not pay tithes to him as they are bound, with a servile condition falsely objected as their excuse, or bell-ringers and funeral attendants delinquent in the same article, or receiving from them any part of the tithes, while furnishing him fitting satisfaction for the things withdrawn. He humbly supplicated that, if the said bishop did not take care to effect this, we should command it to be done through judges delegated by us, compelling the bishop to make fitting satisfaction for the aforesaid matters if the said chaplains presumed to attempt this by his authority. He petitioned, moreover, that the same bishop should not permit parishioners of his chapels to be received into other chapels as to spiritual jurisdiction and the fourth part of tithes, making satisfaction to him for the things withdrawn if anything in this had hitherto been presumed by his authority. Otherwise, he should cause fitting satisfaction concerning these matters to be exhibited to him by his chaplains; and, lest any doubt arise concerning the parishioners, he petitioned by distinguishing thus: that the aforementioned bishop should not withdraw the parishioners of the villages of Fajsz and Görbe from the Chapel of Táp; but should not withdraw from the Chapel of the Swineherds the parishioners of the estate of Dominic de Mogh, of the king's udvornici, and of the village of those who give martens to the king; prohibiting priests from receiving any caps or cubuli of wine from the conditionarii of the king or queen, who are commonly called royal servants, while permitting the abbot himself to receive them; and also compelling the king's archers and Bisseni to pay the tithes in full.]

The same abbot afterward [*also*] sought from us *and humbly petitioned* that the Bishop of Veszprém should not impede, or cause to be impeded, all those who dwell in the parish or county of Somogy from paying him tithes from all the things they possess, as is more fully contained in the privileges of Pope Paschal, our predecessor *of happy memory,* and of the holy King Stephen. But the aforesaid bishop, *established in our presence, on the contrary* petitioned that we cause the tithes of the county of Somogy situated within the boundaries of his diocese, which the same abbot retains, to be restored to him, unless *the said abbot* showed by some special right that he justly possessed them, *commanding that, when he visits the said county, the bishop be furnished procuration in its churches by the same abbot.* [*He further petitioned that the fourth part assigned to building be restored to him for repairing churches; sought that the chapels in the village of the swineherds and Saint Ladislaus of Fizgoi be destroyed as constructed without the authority and consent of the diocesan bishop; and sought back the Church of Keurishyg, in which the said abbot usurps spiritual jurisdiction for himself, and also the Church of Táp, in possession of which the same abbot had confessed that he was. Asserting that reconciliation of penitents and ordinations of clerics belonged to him, he humbly petitioned that the chaplains and people of Saint Martin situated in the Diocese of Veszprém should receive chrism, holy oil, and the other ecclesiastical sacraments from him as their diocesan, leaving cognizance of spiritual causes to him.*]

But we, having understood through our venerable brother [*Hugolinus,*] *Bishop of Ostia, whom we granted to the parties as auditor, the things that had been proposed before him,* decree that the objections proposed by [*the*] *bishop against the privileges of the aforesaid Pope Paschal and the holy King Stephen, to which the abbot sufficiently responded, are invalid, so that, notwithstanding them, the privileges themselves shall be reckoned valid if the authentic instrument of the aforesaid king shall have been found to be such as the transcript thereof presented to us under the bull of our dearest son in Christ, the illustrious King of the Hungarians; but how far it avails to establish the intention of the abbot, we shall decree at the opportune time.* [*Meanwhile, nothing shall be altered concerning the status of the monastery according to the receipt of tithes that the same monastery possesses.*]

But chrism, holy oil, consecrations of altars or basilicas, and ordinations of clerics who are to be promoted to holy orders, the clerics of the churches or chapels of the monastery itself, which is

situated in the Diocese of Veszprém, shall seek from the Bishop of Veszprém, provided that he is Catholic, has the favor [*and communion*] of the Apostolic See, and wishes to exhibit them freely *and* without any depravity; otherwise, they shall have free faculty to receive them from another Catholic prelate whom they prefer, as we perceived to be contained in the privilege of the said Paschal and of Pope Alexander, *of good memory,* our predecessors, notwithstanding the privilege of Pope Clement *of happy memory,* through which the privileges of his predecessors were not derogated, since he made no mention of them, especially since Clement himself granted that privilege saving the institutions not only of the Roman Church but even of its legates.

Nor could the prescription that the same abbot opposed in his own support obstruct, because, if the *prescription* was completed when the *Abbot of Saint Martin* obtained the privilege from Pope Alexander, he appears to have renounced the right of prescription, especially since before us he used that privilege, which contradicts his intention as to this article. But if the prescription was not yet completed but was in the process of prescribing, after a privilege of this kind had been obtained he did not have good faith, and therefore according to the canons he did not prescribe. [*Moreover, the interdicted persons, etc. Given at the Lateran, on the fifth day before the Nones of March, in the fifteenth year of our pontificate, 1212.*]

Chapter XX

Latin source headnote: In neither the canonical nor the civil forum is prescription with bad faith valid.

The same, in the general council.

Because everything that is not from faith is sin, by synodal judgment we define that no prescription, either canonical or civil, shall be valid without good faith, since every constitution and custom that cannot be observed without mortal sin is generally to be derogated. Hence it is necessary that one who prescribes have no consciousness at any part of the time that the thing belongs to another.

Title XXVII: On Sentence and a Matter Adjudged

Chapter I

Latin source headnote: A sentence rendered contrary to laws or canons does not bind, nor is it necessary to appeal from it. Panormitanus.

Gregory.

A sentence pronounced contrary to laws or canons, although it is not suspended by an appeal, nevertheless cannot subsist by the law itself. *But after, by way of superabundance, it is established that an appeal was also extended to you, we marveled why you did not even send men who could have rendered an account of your right.*

Chapter II

Latin source headnote: Litigations ought to be terminated quickly.

The same.

To terminate the controversies of disputants by a swift sentence [*without doubt*] *accords both with equity and with rigor.* [*Therefore, because, etc.*]

Chapter III

Latin source headnote: A priest is not to be deposed without just cause.

The same.

A concordant sentence of priests cannot remove anyone from the priestly grade except for just causes. [*We exhort, etc.*]

Chapter IV

Latin source headnote: Someone justly petitions that a sentence be confirmed by the Pope if it was rendered justly and reasonably.

Pope Leo.

Let the things that have been defined justly and reasonably according to ecclesiastical custom be strengthened also by our sentence. [*Given on the fourth day of August, in the current year, 446.*]

Chapter V

Latin source headnote: A judge appointed over execution of a sentence admits an exception of fraud or nullity of the sentence, not to the effect that he pronounces upon it, but that he transmits the matter to the superior who judged, if he finds it probable. This it says notably.

Alexander III, to the Archbishop of York.

For the rest, know that, if we command that a sentence rendered by us be put into execution by someone and fraud has intervened, the executor does not have faculty to take cognizance of the whole matter, but it will be necessary that the questions that arise be brought to the Apostolic See.

Chapter VI

Latin source headnote: For a defendant condemned to delivery of possession, it does not suffice to deliver a pledge in place of possession itself.

The same, to the Bishop of Norwich.

When possession has been adjudged to certain persons, it does not suffice that pledges be given to them unless they enjoy corporal possession.

Chapter VII

Latin source headnote: A sentence rendered against a marriage never passes into a matter adjudged; hence it is revoked whenever the error is established.

The same, to the same and V., Archdeacon.

W., bearer of the present letters *and your parishioner,* showed us by his notification that, when *in the face of the Church* he had lawfully betrothed a certain woman, *a widow named A.,* and carnal union followed, scandal arose between them, on occasion of which *the aforesaid man* withdrew the *conjugal* debt from her. But the blood relatives of the *already-mentioned* woman, taking this ill, moved a question *before*

you, proposing that he had taken the woman as wife when unwilling and resisting, and not existing at an age suitable for marriage. And because the same *man, as is proposed to us,* desired to lead a dissolute life, at length, through the intervening effort of either, they were separated less than reasonably. Therefore, unwilling that marriages canonically contracted be dissolved through a certain levity, *by commanding through apostolic writings,* we order your discretion that, if it is established to you that they were not lawfully separated by a judgment of the Church and that the Church was deceived, you shall cause them to remain together as man and wife, *contradiction and appeal ceasing.*

Chapter VIII

Latin source headnote: A sentence rendered against a church under pretext of an iniquitous custom is retracted.

The same, to T. and the Clerics of Saint Anastasia of Verona.

When the cause being conducted between you and the laymen G. and A. concerning a certain house sold to them by your archpriest had been brought to the examination of *our beloved son* I., *cardinal priest of the Basilica of the Twelve Apostles and then* legate of the Apostolic See, after an appeal had been interposed to us and delays received, because within the term fixed for you, son T., to prosecute it you had not set out on the journey *of coming to us,* he, pronouncing sentence against you, took care to adjudge the aforesaid house to the aforementioned G. and A. according to the custom of the city of Verona. Then, when the cause had been brought to us by appeal, the Bishop of Brescia, delegated by us, promulgated a sentence against you according to the same custom, with the form of the canons spurned, as the aforesaid legate had done. But we, *when at length either party had presented itself to our sight, more diligently* considering that, although the authority of usage or custom is not small, nevertheless it never prejudices truth or law, revoked the aforesaid sentence *by the common counsel of our brothers* and, absolving you from their claim, adjudged the aforesaid house to you and your church *by apostolic authority.*

Chapter IX

Latin source headnote: An iniquitous sentence is retracted by a superior, although the cause was committed with appeal removed. But if it contains manifest iniquity, it is null. This it says on the understanding that it sets forth two cases.

The same, to the Archbishop of York.

Among the other—(*And below:* [*cf. c. 2, On the Office of a Delegated Judge, I.29.*]) Likewise, when some cause is committed with appeal removed and an iniquitous sentence is rendered, it is necessary that it be annulled; nor ought one to stand by it if it contains manifest iniquity.

Chapter X

Latin source headnote: A sentence rendered against an absent person who is not contumacious is not valid in a matrimonial cause. This it says on the understanding that this woman was not contumacious. Panormitanus.

Clement III.

The tenor of your letters *transmitted to us* shows that, when *in the archpresbyterate of Saint Germanus* a matrimonial question was being conducted between R. and the woman M. and had been committed to *our venerable brother* the Bishop of Chieti, *because that land was then disturbed by the death of the king, the woman, taking precaution for herself against the evident danger of the roads, could not present herself to the judge, by whom she had now been cited a third time, although she transmitted a messenger with an excuse; nevertheless, the* same bishop *afterward* absolved R., while the woman was absent, from her claim. But the same woman, *coming to our presence,* obtained letters from us to you that you should take cognizance of the cause and terminate it with its due end, *since it could not be decided before the aforementioned bishop because of the disturbance of the land.* But the said R., summoned by you to the cause, did not attend, putting forward illness. But because on the following night he presumed to join another woman to himself, you promulgated a sentence of excommunication against him. Afterward, absolved from it and coming to you *in his own person,* he showed the letters of the aforementioned bishop, by which it appeared that he had been absolved *on this account* from her disturbance, *because the woman did not approach the presence of the bishop.*

Therefore, because, *as you propose, the same* woman daily cries after you with tears and offers her witnesses to prove that the same R. publicly betrothed her with a betrothal ring, you *humbly* petition to be instructed as to what you ought to do concerning these things. We therefore respond to your inquiry in this way: notwithstanding *such* unlawful absolution that the bishop made, you shall proceed in the cause, *with the impediment of appeal removed, and decide it with its due end,* strictly prohibiting the same R. under penalty of excommunication from approaching the woman whom he superinduced before the cause has been decided. *Moreover, you shall not reject the witnesses whom the aforesaid M. shall determine to produce from her own kindred, or others, provided that they are otherwise suitable, since blood relatives are accustomed to know their own kinship better than strangers, both through charters, witnesses, recitation of their elders, or other arguments.*

Chapter XI

Latin source headnote: A sentence of separation duly rendered in a matrimonial cause is not revoked solely upon the confession of a spouse asserting the contrary, but in the meantime one stands by it until the contrary is lawfully shown. Thus Panormitanus summarizes it, so that it contributes something new.

The same.

The blood relatives of E., bearer of the present letters, as you intimated to *us* by your letters, *having produced witnesses at law under your examination,* lawfully proved spiritual co-parenthood between her and her husband in such a way that you pronounced a sentence of separation between them. But when the aforesaid E. afterward confessed to you that in truth she had not been his co-mother before the sentence, but that after the separation she contracted spiritual co-parenthood with him, she at length hastened into a second marriage. *Therefore, because, now recognizing her guilt, she awaits our counsel concerning this, and you also sought a response from us in this matter,* by *the present page* we respond to your fraternity that one is not to withdraw from a sentence reasonably promulgated by a judgment of the Church because of the confession of the woman alone, unless *perhaps* the contrary were lawfully proved. *Finally, you shall impose upon the same woman, who confessed her delict to you, that penance which, according to the quality of the person and the quantity of the excess, you see should be imposed upon her.*

Chapter XII

Latin source headnote: If the Pope, contrary to his own pronouncement, confers a benefice while concealing this, the collation is said to be surreptitious and does not bind.

Innocent III, to the Archdeacon and Sacristan of Maguelone.

When formerly, [*as we have learned,*] the Bishop of Maguelone *of good memory,* [*having obtained the assent of the beloved sons P. de Agrifolio, archdeacon, and B., claustral prior,*] nominated *our beloved son* P. of Castelnau to the vacant archdeaconry of the same church, while the provost prohibited by interposed appeal that anyone be instituted there unless a double vote had first been granted to him, the bishop [*both because he said that it was contrary to the ancient custom of the Church of Maguelone and the common law of the canons for anyone to claim for himself the vote of two persons in the same church, and because from an indulgence of Pope Celestine, our predecessor of happy memory, which he caused to be read in the chapter while the provost was present, he proved that it was granted to him that he should confer a vacant archdeaconry or sacristy, notwithstanding contradiction or appeal, if nothing reasonable and canonical could lawfully be objected and proved against the person nominated by him,*] invested the said P. with the archdeaconry through *his* ring, *placing him corporally in the office of archdeacon.* But the provost, agitated by the goads of indignation, [*afterward*] presumed to nominate another person to the same archdeaconry.

When, on occasion of this act, both the provost and the aforesaid P. presented themselves to the apostolic sight, [*and received as auditors in their questions us, then established in a lesser office, and our beloved sons B., cardinal priest of the title of Saint Peter in Chains, and M., of good memory, cardinal priest of the title of Saints John and Paul, the provost objecting that the institution by the bishop ought to be annulled because it was made after appeal, contrary to the definition of Pope Alexander, our predecessor of happy memory, and by one suspended, the aforesaid P. responded, as he asserts, to each point in this manner: namely, that it was established that the appeal itself was of no moment, both because an appeal had been made by a suspended person—which he said that he wished to prove immediately—wherefore it was not his concern to appeal, and because an appeal interposed contrary to the said indulgence did not bind; and because in the form of appeal he expressed a cause prohibited at law, namely that of a double vote or dignity, which according to the canonical sanctions ought to be committed to no person, however experienced. Hence he proved from a consultation of Pope Alexander of happy memory that deference was not to be given to such an appeal. He firmly asserted that the constitution of Henry, formerly Bishop of Albano, under pretext of which the provost had usurped the dignity of senior prior, could not protect him, since in it it is expressed more clearly that henceforth there should be no senior prior in the Church of Maguelone. Hence it followed that neither the provost nor another could in any way claim that dignity for himself, especially since it is expressly contained there that the provost ought not to have the dignity of prior but only care concerning correction of excesses and errors. For if he had wished a dignity to be understood where he placed "care," he would have expressed the term "dignity," as he said could be proved from a consultation of our aforesaid predecessor Pope Alexander. From the words of the constitution itself, however, he showed that the provost ought to have received the said care from the hand of the bishop. Moreover, from the letters of the bishop complaining concerning this, it was clearly evident that the provost, not called by God as Aaron was but arising from himself, had shamelessly assumed honor for himself. Hence, since one who abuses power permitted to him deserves to lose his privilege, he petitioned that perpetual silence concerning this be imposed upon him both in the name of the bishop and in his own, proposing that by law and the ancient custom of the Church of Maguelone the aforementioned dignity was to be conferred only upon one discharging priestly office. He insistently affirmed that the provost could not be promoted to the priesthood because weakness as well as deformity of body impeded him, saying that the party of the bishop, as the greater and sounder part,*

deservedly prevailed according to the Lateran Council, notwithstanding the appeal of one person. He further alleged that the provost had voluntarily renounced the appeal interposed. For since he had appealed in such a way that no archdeacon ought to be instituted unless a double vote were granted to him, and he himself attempted to proceed to the institution of another, he was convicted by a contrary act, according to a consultation of Pope Urban, our predecessor of good memory, of having withdrawn from the office of appeal. But to the article of the definition he responded in this way, asserting that the bishop proceeded reasonably according to the tenor of the definition, adding also that the provost, by retaining the Churches of Saint Firminus and Maurinus, had acted manifestly contrary to the definition itself and therefore could not invoke its aid at law. To the objection of suspension, he said in opposition that the bishop had first lawfully appealed and therefore was in no way bound by the sentence afterward rendered, proposing also that the sentence of interdict had been rendered conditionally and for a time, namely until he obeyed the apostolic mandates. Hence, since before the said institution he had obeyed the commands of the Apostolic See, he had without doubt been absolved by the censure of both civil and canon law, especially since the person who had suspended him did not at all doubt to communicate with him in all things as one fully absolved. Finally, he concluded that, even if the aforementioned bishop truly were suspended, nevertheless this could not be objected against him by the provost, because, since the provost had been marked by a sentence of suspension for the same matter, every hearing against the bishop ought to have been denied to one laboring under a similar disease, especially since he had often communicated with the bishop himself both in the ecclesiastical sacraments and in institutions of churches, and therefore could not object against him the mark of suspension. Finally, if none of these things supported the party of the bishop, he said that this could suffice to deny the provost a hearing: that from the letters of the bishop it appeared most clearly that the provost was bound by the bond of excommunication both through the sentence of the ordinary judge and by the law itself.]

At length C., our predecessor, annulled *by sentence* what had been done by either party *according to its own will,* pronouncing that he would write to certain persons *of the province* that they should admonish both the bishop and the persons to ordain the archdeacon concordantly and, if perhaps their admonitions were not admitted, should not delay executing this *by apostolic authority.* But after this our said predecessor, as we believe deceived, conferred the archdeaconry itself, contrary to his own pronouncement, upon G., who had not yet been promoted to the office of the diaconate, without the knowledge of *the aforesaid Peter,* proctor of the bishop, then staying at the Apostolic See.

We therefore, adhering to the footsteps of our predecessors, who say that a sentence of the Roman See, when something has been obtained by surreption, can be altered for the better, revoke as void, *by the* [*common*] *counsel of our brothers,* what was done concerning the aforesaid G., notwithstanding the donation that he is recently said to have received from the same bishop in mockery of the apostolic donation; and, imposing perpetual silence upon him concerning the said archdeaconry, although absent, since the surreption is clearly established, *by authority of the present letters and by commanding,* we order you that, *notwithstanding any contradiction or appeal, within the space of one month after receipt of these letters,* you shall take care to ordain the often-mentioned archdeaconry *with a person against whom none of the canonical institutes stands,* with the full concord of all of you who shall be present in the church intervening. [*Otherwise, etc. Given at Rome, on the sixth day before the Ides of June, 1198.*]

Chapter XIII

Latin source headnote: A sentence rendered against the right of a litigant is valid if an appeal was not made from it within ten days. Or otherwise thus: through a sentence from which no appeal was

made, a church can be subjected to a prelate inferior to a bishop or made to belong to another church.

The same, to the Abbot and Convent of Saint Zeno of Verona.

When a question was being conducted between you [*on one side*] on behalf of your church and *Musetus,* archpriest, and the clerics of Saint Proculus, *in the name of their church,* concerning subjection of the same *Church of Saint Proculus and many other articles,* [*while you, son Abbot, and the archpriest himself were established in our presence, we appointed as auditors our venerable brothers P., Archbishop of Compostela, and Odo, Bishop of Tortona, then staying at the Apostolic See. But when the bishop himself departed from the regions of the City while the litigation was pending, we took care to substitute in his place the beloved son M., our subdeacon and chaplain. In their presence,*] it was proposed on your behalf that the said [*Church of Saint Proculus*] ought to be subject with full right to your monastery, namely in institution, destitution, *or* investiture of the archpriest; his fealty; the obedience of him and the brothers; correction; presentation to orders; tonsure; reception of chrism; litanies; and other similar things through which full subjection is declared.

To prove this, your party produced in the midst the public instrument of the grant of B., formerly Bishop of Verona *of good memory,* which grant his successor T. held ratified and also confirmed. Concerning these matters it also introduced privileges and confirmations both of Roman Pontiffs and of the Patriarchs of Aquileia. One of them, *namely Godfrey,* expressly stated concerning full subjection in his privilege that this had been done and completed under the testimony of R., formerly Bishop of Verona, who had been archpriest of the same church, and in it he commanded that the prior of the *Monastery* of Saint Zeno subscribe in his place, *as is contained in the public instrument.* Your party also added that in the course of time a controversy arose between B., formerly abbot of the same monastery, and *Sicherius,* Archpriest of Saint Proculus, and his brothers concerning fealty and manual obedience; they denied that they were bound only to those two things, and witnesses were produced concerning them. At length the aforesaid T., Bishop of Verona, *the arguments of either party having been heard and learned,* following a certain cardinal by whom it had been adjudged that either the archpriest should leave the church or promise obedience to the abbot, *and also believing that the witnesses who had given manifest testimony concerning fealty had deposed true things before him, himself likewise* defined it by sentence, *as we perceived to be contained in the public instrument.*

Since his sentence had been suspended by no appeal, it passed into a matter adjudged, *which your party asserted could be attacked by no remedy of law. From its pronouncement until the present times, a space of fifty years elapsed, through which it proved by witnesses and instruments that the Monastery of Saint Zeno possessed the aforesaid church with full right; that the aforesaid archpriest and his brothers, past and present, made obedience to the Abbots of Saint Zeno;* [*that they received tonsure from them and furnished them services in the other matters that we have premised; and thus it firmly asserted that the monastery was in possession until the time of the recently arisen litigation, complaining that the Church of Saint Zeno was unduly molested by the named archpriest concerning certain of the foregoing. It therefore proposed that its assertion was fortified principally by three arguments: namely, confirmation of privileges, authority of the sentence, and length of time, so that a threefold cord is dissolved with difficulty. But in opposition, the aforementioned archpriest denied that all the foregoing belonged to the monastery, responding to the foregoing arguments in this way: because the instrument of the grant of the aforesaid Bishop B. had not been drawn up by a public hand or secured by an episcopal seal and appeared prima facie suspect on account of certain erasures, it neither could nor ought to generate prejudice against his party. And thus*

neither could the other proofs of the abbot, such as confirmations and privileges dependent upon that donation, since, resting as upon a sandy foundation and a reed staff, and the principal not being valid, the accessories had no firmness. He said that the sentence of the aforementioned T., Bishop of Verona, did not harm his party for this reason also: because it contained neither absolution nor condemnation, since it had been pronounced under an alternative, as was the sentence of the cardinal, which, since it could not be produced in the midst, could neither profit nor harm, especially since he altogether denied that it had been pronounced. Against it, even if it had been pronounced and not suspended by appeal, an action of falsity could nevertheless be brought, since it had been rendered from the instrument of the aforesaid B., Bishop of Verona, falsified through the vice of erasure. Nor are the witnesses said from the tenor of the sentence to have deposed under oath, wherefore no faith was to be given to them. He also said that length of time or prescription could not harm his church, because the adverse party had in no way proved continuous or frequent subjection, but only that an abbacy at some time presided over the Church of Saint Proculus. Moreover, to assert his intention, the party of the aforesaid archpriest produced a public instrument of the above-mentioned B., Bishop of Verona, older than that which had been produced by the already-mentioned abbot. In it, the same bishop, when the archpriest and clerics of Saint Proculus lamentably petitioned him, firmly promised under penalty of excommunication that he would never subject the named church to another, after the archpriest and clerics of the Church of Saint Firmus had heard from the bishop that it was to be subjected. The said T., his successor, confirmed his act by his letters. They would in no way have acted contrary to these letters if the aforesaid abbot, when he obtained from them the letters of subjection that we premised, had disclosed the things that had been done. Therefore, he said that the rescripts of the abbot were obtained through suppression of the truth with fraud employed. The same archpriest, also wishing to show the liberty of the church, lawfully proved by the depositions of witnesses that he, together with his clerics and without the abbot's permission, had leased and withdrawn leases, and had ordered the chapels of Saints Vitus and Maximus, placing lay sisters and other persons in them; that he had freely instituted cellarers and other officials in his church; and that he had sometimes received chrism from the cathedral church and sometimes from the named monastery. But the party of the abbot, in order to refute the response of the adverse party that said the instrument of donation lacked force, produced other instruments of that time, so that from comparison with them, although they had not been drawn up by a public hand, its instrument might appear authentic, since the simplicity of the people of that time did not require such things. But the adverse party disqualified both it and the others. Furthermore, the party of the abbot said that the instruments of the adverse party, which it proposed bore the mark of falsity, even if they were true, could harm it in no respect, since they had been exhibited in the former judgment, where both these and other things that the adverse party could object—whether committed or even alleged—ought not to be heard further, lest litigations become immortal; they ought in no way to be renewed under pretext of an instrument afterward discovered. Also, a complaint of falsity, which the adverse party wished to propose, does not exceed a space of twenty years; and since forty years and more had elapsed from the time of the sentence rendered, and three years from the time litigation was moved, a complaint of falsity could no longer be brought.]

Therefore, when the aforesaid auditors had prudently and faithfully reported these things that we have premised and many similar things to us and our brothers, we, having communicated the counsel of our brothers, although perhaps one should not rely greatly upon the said instrument of donation or upon the confirmations or privileges that took cause and origin from it, nevertheless, considering that, as far as the litigants themselves are concerned, a right was made from the sentence after it passed into a matter adjudged —even if it had been rendered contrary to the right of a litigant, since it was not rendered expressly contrary to the law of a constitution, the truth of the acts prevailing over words, which is presumed to have been duly celebrated in all respects—*we establish and by sentence* define that the Archpriest of

Saint Proculus who shall be in office for the time being shall furnish fealty and obedience to the Abbot of Saint Zeno. [*And because, etc. Given at Rome at Saint Peter's, on the thirteenth day before the Kalends of July, 1198.*]

Chapter XIV

Latin source headnote: A sentence rendered against a claimant, containing nothing iniquitous, is to be confirmed in a cause of appeal, although through the attestations it appears that proof was made for the claimant, provided that presumptions concur for the sentence. These are in the letter here, and according to this understanding the case here is very singular.

The same, to the Canons of Novara.

The cause being conducted between you and *the beloved son* A. *Siccus,* a cleric, concerning a prebend of the Church of Novara *that formerly belonged to our venerable brother the Bishop of Novara, with which the same Albert said that he had been invested by a ring by Pope C., our predecessor of good memory, after it had been examined before us for a rather long time, at length,* with the consent of the parties *and appeal removed,* we committed it to *our venerable brother* the Bishop of Lodi to be terminated. He, *as we learned from his letters, having more fully understood the arguments of either party,* promulgated a definitive sentence for you against the said A., from which an appeal was made to our hearing. *Therefore, when the said Albert and Masters I. and V., proctors of your church, were established in our presence on this account, the same Albert endeavored in many ways to prove that the sentence itself had been rendered iniquitously and for this reason ought not undeservedly to be retracted, while your said proctors defended the sentence and petitioned that it be fortified by the protection of our confirmation. We therefore, having heard the things proposed on either side and understood them more diligently, having held* [*also*] *a diligent deliberation with our brothers concerning this,* although it had been proposed on behalf of A. himself that the said bishop promulgated the sentence contrary to the form of our mandate, as he endeavored to prove through the attestations, nevertheless, because the mind of a judge is not always inclined to one kind of proof; because the sentence itself contained nothing iniquitous; because the cause had been committed to the same judge by the common assent of the parties *with appeal removed;* and because he had been requested by either party to render sentence after examination of the cause, we took care to confirm the sentence itself *by apostolic authority and by the counsel of our brothers, and through our venerable brother the Bishop of Porto we defined that it was to be observed* [*etc. Given at the Lateran, on the sixth day before the Ides of December, 1198.*]

Chapter XV

Latin source headnote: If a sentence commands something to be done at a certain term, the period of ten days for appealing runs from the time of the sentence, not from the day when the term ended. This is the first point. The period of four months that is granted by law to those condemned in a personal action can for cause be shortened by the judge, and one who willingly receives the shortened term cannot appeal after ten days, even though it is not established that the judge shortened the term for cause. This is the second. An appeal is not made from execution of a sentence unless the manner is exceeded in execution. This is the third point, extracting the core of the chapter according to Panormitanus.

The same, to the Bishop of Constance.

As to the consultation—(*And below:*) Because *you similarly* asked us whether deference is to be given to the appeal of a cleric who, receiving without contradiction a purgation prescribed to him by sentence and a suitable term for receiving it—say twenty days or more—and coming on the day afterward appeals, expressing no cause for appealing, although there is no place except for undertaking the purgation and executing the sentence, and more than ten days is said to have elapsed from its pronouncement and the purgation enjoined, we have determined to respond in this way: since after a space of ten days a sentence passes into the authority of a matter adjudged, one who does not have recourse to the aid of appeal within that time has denied himself an approach to appeal, since through this he appears by interpretation of law to have obeyed the sentence rendered, especially where no cause for appealing is rendered. Nor is it fitting on that account that execution of the sentence itself be retarded, although a period of four months is regularly established for doing this, because it can sometimes be shortened by the person sitting in the middle and also extended. And it can and ought to be imputed to one who from the beginning willingly receives a shorter term, since from this he appears to have contemned a greater benefit. Hence such a person will not be heard when appealing, unless perhaps the canonical manner of execution is exceeded against him. [*Given at the Lateran, on the third day before the Ides of January, 1199.*]

Chapter XVI

Latin source headnote: A sentence can be proved through witnesses, although they do not depose concerning the causes that customarily move the judge to give sentence.

The same, to the Dean, Chancellor, and C., Canon of London.

As you intimated to us *by your letters,* when the cause being conducted between H., a subdeacon, and B., priest *of Saint Clement,* concerning five measures of grain to be paid to the subdeacon himself each year had been committed to you *by our delegation,* and, *the parties being established in your presence,* the aforesaid subdeacon petitioned that restitution be made to him, the adversary responded that he was not bound to this, since on another occasion he had been convened *before a judge* concerning this and absolved by sentence, which he wished to show through the testimony of two *priests.* From their depositions it was established *to you* that Master A., by authority of *our venerable brother* the Bishop of London, absolved him *by judgment* from the claim of the aforementioned subdeacon. But because their testimony had been put forward as if naked, since they said that they *knew* nothing concerning the causes that customarily move a judge to pronounce sentence, *there was disagreement among the learned in law from whom you sought counsel, some asserting that such testimony was not valid and others thinking that it was. Hence in this ambiguity,* you determined that the Apostolic See should be consulted as to what is to be held. But since in very many places in which there is an abundance of prudent persons, the custom exists that all things that move the judge are not expressed in pronouncing sentences, we respond to you in this way: since from the depositions of the aforesaid witnesses it was established *to you* that a sentence *was* pronounced by his judge, it ought to be presumed, on account of judicial authority, that all things proceeded lawfully. [*Given at the Lateran, on the second day before the Kalends of April, 1199.*]

Chapter XVII

Latin source headnote: Not only a defeated defendant but also a third party whose interest is involved can appeal from the same sentence; and the sentence can be confirmed as regards a

defendant showing nothing of his right, but invalidated with respect to a third party reasonably appealing.

The same, to the Bishop of Astorga and the Abbot of Saint Isidore of León.

When, concerning the controversy being conducted between *our venerable brother* the Bishop of Orense *on one side* and the Monastery of Celanova on the other *concerning its status,* various sentences had been rendered for the *same* bishop, *O., archdeacon and messenger of our venerable brother* the Bishop of Oviedo, *approaching the Apostolic See,* complained that through them the Church of Oviedo was gravely injured, to which he proposed that *that* monastery belonged. (*And below:*) *Therefore, after the aforesaid cardinals faithfully reported these and similar things to us and our brothers, because it was established to us through the letters of the legates that two had proceeded when the third was unable to participate, as we also understood from the assertion of that third person established at the Apostolic See; and against their sentence,* since nothing reasonable was proposed and shown on behalf of the monastery why the sentence promulgated for the bishop ought to have been invalidated, we determined, *after communicating the counsel of our brothers,* that it was to be confirmed as regards *the monastery itself, imposing perpetual silence upon it in this part. But because we could not elicit the truth concerning the appeal of the Church of Oviedo, we have determined to commit the cause itself to your examination; through apostolic writings* we command that, if it is established that an appeal was reasonably interposed on behalf of the Church of Oviedo and that its messenger was sent to prosecute it within the lawful time, execution of the sentence shall be deferred, lest the Church of Oviedo incur detriment concerning *the same* possession. Otherwise, *it* shall be put into execution, as law postulates, without prejudice to the Church of Oviedo, to which the foregoing does not prejudice its ability to obtain its right, since a matter transacted between some persons does not regularly harm others according to canonical and civil constitutions.

Chapter XVIII

Latin source headnote: If one cited for sentence did not appear for a lawful cause unknown to the judge, the sentence rendered in his absence holds, but is retracted when he proves the lawful cause of his absence. But if the impediment is proved not fully, the sentence is not retracted unless he first demonstrates its injustice. This it says, and this is the true and noteworthy understanding according to Panormitanus, which other doctors did not elucidate so clearly.

The same.

When Berthold, a knight, had obligated his manor *or estate in Westhusen formerly* to P., a knight, as a pledge, after that P. had been taken from the midst, A., his nephew, who succeeded him, *of the diocese of Strasbourg,* while the church of the same place *in Westhusen* was vacant, asserting that the right of patronage had passed to him with the whole estate, presented D., a cleric *of the same diocese, at the entreaties of C. of good memory, Bishop of Strasbourg,* to the archdeacon of the same place for the aforesaid church; and the archdeacon, with the consent *and will* of the bishop, instituted him in it, causing him to be inducted into corporal possession. But the aforesaid B., lord of the estate, *asserting that he had expressly retained the right of patronage for himself when he had obligated the estate to the creditor,* presented T., a priest, to the aforementioned bishop, but the bishop did not admit him, *at the judgment of his own will.* But when *the aforesaid bishop had entered the way of all flesh,* the said T. lodged a question against the aforementioned D. concerning the aforesaid church *before the substitute of the bishop-elect,* and the Bishop of Reims, legate of the Apostolic See, delegated the business to judges. When afterward they

had remitted to him the attestations received on both sides through the parties, and, while the aforesaid D. approached with his attestations, the said T. took no care to appear either through himself or through a suitable representative, the bishop, after carefully inspecting the attestations of the aforementioned cleric, *as we perceived to be contained in his letters,* rendered him absolved by sentence from the impetition of the often-mentioned T., imposing silence upon that T. concerning the aforementioned church.

Afterward, however, that priest, approaching the presence of *the same* archbishop *with his attestations* within a short time, alleged a just cause of absence. The archbishop, by his letters, commanded the aforesaid Bishop-elect of Strasbourg and *the beloved sons,* the Abbots of Haute-Seille and Tudebernon, that, if he showed a just cause of absence before them, they should declare the aforesaid sentence to be of no validity and, *after carefully inspecting the attestations of both parties,* should terminate *the cause itself* with its due end; otherwise they should cause the sentence *that he had rendered firmly* to be observed. But when the said bishop-elect and the aforesaid abbots committed their places to others, those subdelegates received witnesses concerning the aforesaid article, from whom the said cleric sent forth the voice of appeal to us.

Although, *when each party had approached our presence with the attestations sealed with the seals of the aforesaid judges,* the priest had proved a just cause of absence less than sufficiently, nevertheless, lest opinion prejudice truth, *wishing to proceed in truth, since Christ is truth,* we granted to them as auditor *our beloved son* R., cardinal deacon *of Santa Maria in Domnica.* When he had fully and faithfully reported to us all things *that had been proposed before him, we, after carefully inspecting the attestations of both parties and the sentence of the aforesaid bishop,* found that *the same* archbishop had been circumvented by the tenor of his sentence: both because it was contained in it that it had been sufficiently proved through the attestations of that cleric that the aforesaid A. had been in possession of the right of patronage when he presented the same *Bruno* to the aforesaid church, although through those attestations nothing else *concerning this* had been shown except that, for a certain right customarily rendered from that church to the patrons, the aforesaid P. and A. received ten solidi annually, *which the parish priest of the same place nevertheless always resisted providing*; and also because it is said in the same sentence that the said T. *utterly* failed in proof, although it appears *manifestly* through his attestations that he sufficiently proved his intention; and also because he did not receive the cause sufficiently instructed, since he received the attestations of only one party, which contributed little to the cause.

Hence we have determined that the sentence itself should be invalidated, adjudging the aforesaid church to the aforementioned T., since it has been established to us evidently through the attestations that he was presented to the often-mentioned church by the true patron, *imposing perpetual silence upon the adversary concerning it; wherefore, through apostolic writings,* [*by way of precept,*] *we command your discretion that, supported by our authority, you cause our sentence to be observed inviolably, inducting the aforesaid T. into corporal possession of the same church and protecting him after induction.* [*Contradictors, etc. Given at Rome, at Saint Peter's, on the Ides of March, 1205.*]

Chapter XIX

Latin source headnote: The Pope observes the order of law in the sentences that he pronounces.

The same.

In causes that are decided by the judgment of the Supreme Pontiff, both the order of law and the force of equity are to be subtly observed, since in similar cases others are bound to judge similarly, unless perhaps, upon considering a cause of necessity and utility, he has determined by way of dispensation that something is to be established. [*Therefore, some time ago, etc. (cf. c. 22, On Election, I. 6.) Given at the Lateran, on the fifth day before the Ides of April, 1203.*]

Chapter XX

Latin source headnote: A second sentence, rendered in a different instance contrary to the first, holds by mere law; nor ought it to be infringed, even if it is unjust, since no appeal was taken from it —especially if the first sentence was not shown to the second judges. This it says, according to Panormitanus.

The same, to the Convent of Saint Leodius.

A question was *some time ago* agitated between the Monastery of Saint Audoen of Rouen and yours concerning the manner of electing an abbot in *your said* monastery, [*on account of which, when the parties approached the Apostolic See, we gave them as auditors our venerable brother Octavian, Bishop of Ostia, and our beloved son G., cardinal deacon of San Giorgio in Velabro. In their presence it was proposed on behalf of your monastery that, when that abbey was formerly vacant of a pastor, you, coming together as one, assumed for yourselves as abbot by canonical election Richard, a monk and religious man, from the bosom of that church, according to the Rule of blessed Benedict and the liberty of the church, also strengthened by apostolic privilege, presenting that abbot-elect to the diocesan bishop for obtaining the office of benediction. The bishop, being prohibited by the beloved son Geoffrey, abbot of the aforesaid Monastery of Saint Audoen, did not grant what had been requested. Therefore, seeing that your purpose was being retarded, lest anything be done to the prejudice of your monastery, you appealed to the Apostolic See, from which afterward, through your messengers, you obtained letters of commission to our venerable brother Henry, bishop, and the beloved sons Henry, cantor, and R., archdeacon, of Bayeux, under this tenor: that, the parties having been called to their presence, after inspecting the privilege and all the reasons that they should determine to propose on each side, they should terminate the cause itself, with appeal removed, by concord or judgment, notwithstanding any letters obtained from the Apostolic See without mention being made of these. But if all could not participate, the bishop with one of the others should nevertheless execute these things.

When, therefore, the parties, established in the presence of the aforesaid bishop and precentor of Bayeux—their colleague the archdeacon being excused for a certain and necessary cause—could not be recalled to concord, your party wished to produce witnesses greater than every exception to prove that the election had been canonically celebrated according to the tenor of the privilege of Pope Lucius of good memory, our predecessor, granted concerning the election to be made. R., a monk and proctor of the said Abbot of Saint Audoen, presented to them the open letters of our venerable brother the Archbishop of Rouen, the Bishop of Évreux, and the beloved son R., Archdeacon of Évreux, prohibiting them from proceeding in the cause on the ground that they said they had received an apostolic mandate concerning discussion of the same cause. But because the tenor of the mandate had not been inserted in those letters, and the proctor, although more often required, was

unwilling to show the original or rescript, setting their prohibition aside, they decreed together more than once that the proof you offered concerning the canonical election was to be admitted.

But the aforesaid proctor, striving to oppose the proof, said that in the preceding election the Monastery of Saint Audoen had been despoiled of possession of a certain right of its own, which it had obtained without disturbance up to the creation of the last abbot of that place, who had been petitioned and elected from the congregation of Saint Audoen by the monks of La Croix. Therefore, when he wished to prove this, they received your witnesses concerning the canonical election, but those of the proctor concerning the alleged spoliation. When, after diligent examination, they were preparing to publish their depositions, at the instance of the said proctor they assigned another day for a second production of witnesses, with which he said that he would be content.

And when the parties came together on the day and at the place, the proctor, being required by the judges themselves concerning the witnesses to be produced, as though renouncing the production of witnesses, delivered to them letters of the beloved sons the Abbots of Bellebec and Mortemer and the Prior of Bellebec, prohibiting them from proceeding in the cause. For they said that they had undertaken a mandate prejudicial to the first, the tenor of which they joined to their letters. But when the first judges, after diligently inspecting the rescript, recognized that it had been obtained through suggestion of falsehood and concealment of the truth—since in the second no mention was made of the apostolic privilege, as in the first, from which the election drew its principal firmness, and the judges themselves were said in the second letters to be suspect to the monks of Saint Audoen for a certain reason, which the proctor could not show—after alleging certain sufficiently frivolous causes of suspicion, he withdrew contumaciously from them without waiting for any interlocutory decision.

Therefore, considering that a recusation of this kind and the allegation of the said suspension had been late and superfluous, especially after the suit had been commenced and witnesses produced on each side—an allegation that perhaps could have had some color before entry into the suit—and also considering that the same mandate had made mention of the former not fully but perfunctorily, they were unwilling to acquiesce in the prohibition of the later judges, just as they had not in that of the former, wishing rather to obey apostolic commands than to exhibit undue reverence to the mandates of inferiors. Many learned in law who were present agreed with them that, since the often-mentioned Abbot of Saint Audoen first obtained letters to the former judges, of which no mention was made in the second, he ought to lack the benefit of both; or, if one mandate ought to prevail over the other, the first was to be obeyed rather than the second, in which there was no mention of the former, since neither did the first, obtained by the same Abbot of Saint Audoen, make mention of that which the other party had obtained.

Moved, therefore, by the foregoing reasons and using the counsel of discreet men, and the attestations of the parties also having been published and their reasons and allegations subtly understood, by authority of our mandate they held the aforesaid election ratified and firm, imposing perpetual silence upon the abbot and monks of Saint Audoen concerning that molestation of the abbot-elect. They also condemned them in expenses of one hundred Angevin pounds, although the other party wished, after giving oath, to declare concerning two hundred. Your party therefore petitioned us that the act of the delegated judges be confirmed and the office of benediction be imparted to the abbot-elect.

But the other party proposed in opposition that your often-mentioned monastery had from the beginning of its construction been made subject to the other by consent of the diocesan bishop to such an extent that no one was to be assumed there as abbot from anywhere other than the Monastery of Saint Audoen, provided that someone suitable for this could be found in it. The correction of the monks and of the Abbot of La Croix also, if he were negligent, was reserved to the Abbots of Saint Audoen, and thus it had obtained from times so long that no memory of them exists. And this institution and the use itself, indeed, are alleged to have been confirmed by Pope Alexander of good memory, our predecessor. Hence, when at one time the monks of Saint Leufredus had elected a certain abbot from somewhere other than the bosom of Saint Audoen, the Abbot of Saint Audoen, learning these things, appealed; and through a sentence of delegates of the Apostolic See the abbot-elect was obliged to renounce the abbey. When, after making profession to the Abbot of Saint Audoen, he had resided for several days in that monastery, through the abbot's grant he was given as abbot to the aforesaid monks.

But while the last abbot still held the monastery—from which, compelled by fear of the king, he withdrew for a time—and while the monks wished to vindicate themselves into liberty and proceed to an unaccustomed election, the Abbot of Saint Audoen, foreseeing this, appealed to the Apostolic See, as Richard, then your abbot-elect, confessed in judgment, adding nevertheless that he had appealed first. But the often-mentioned monks, nevertheless electing him as abbot, obtained an apostolic rescript to the already-said Henry, Bishop of Bayeux, and his colleagues. The Abbot of Saint Audoen, desiring to avoid their judgment as suspect, obtained letters of revocation to the aforesaid abbot and prior. After the prohibition of the former judges, who intimated to them the tenor of the apostolic mandate through their letters, and after the abbot's proctor presented the authentic instrument to them, those former judges asserted that the letters had been obtained through suggestion of falsehood because no mention of the privilege of the adverse party was made in them; and, even after the appeal interposed by the same proctor, they nevertheless proceeded in the cause. On behalf of the Monastery of Saint Audoen they petitioned that their act be revoked as invalid.*]

Therefore, these and similar things that the already-said bishop and cardinal prudently and faithfully reported to us and our brothers having been more fully understood, since it was established to us that the first commission had not been revoked through the last—both because the causes of suspicion proposed in law appeared frivolous, which they ought also to have raised as dilatory before entry into the suit, and which they seem to have renounced by undergoing judgment before the same delegates; and also because nothing was said in the second letters concerning privileges of the Apostolic See and the process of the business *up to the publication of witnesses* before the first judges, which, if it had been expressed, they could by no means have obtained them—notwithstanding the sentence that was said to have been rendered for the Monastery of Saint A., which nevertheless was not shown to us, since, if it had been shown to the aforesaid judges, they would have set it aside and established the contrary; otherwise, *it is the case that* it is to be imputed to those raising it, since suits ought not to be renewed under pretext of new instruments: *after communicating the counsel of our brothers,* we hold the act of the first judges ratified and firm, and, confirming their sentence, we ourselves took care that the office of benediction be exhibited to the abbot-elect by you *afterward,* saving the right of the diocesan *bishop*. [*Therefore, let no one, etc. Given at the Lateran, on the third day before the Nones of June, 1199.*]

Chapter XXI

Latin source headnote: A sentence rendered contrary to a privilege, whether shown or not shown, holds if no appeal or supplication was made from it.

The same, to the Bishop, Dean, and Chancellor of Paris.

When a matter of question had *some time ago* arisen between *our venerable brother* the Bishop of Meaux and the Monastery of Arras concerning the subjection of the monastery itself, and the proctors of the parties were litigating before us, because it was established through the confession of the adverse party that the same bishop had had a quasi-possession of obedience in the same monastery, we decreed that he was to be restored to it. But because a privilege of Pope Innocent of happy memory, our predecessor, expressed the full liberty of the monastery, we commanded [*the beloved son Master G.,*] Dean of Soissons, and his fellow judges that, when the [*aforementioned*] bishop had been restored to the quasi-possession of obedience, unless *within six months after his restoration* he objected and proved something reasonable against the privilege, they should take care, *with the obstacle of appeal removed,* to impose upon him *perpetual* silence concerning the subjection of the *aforesaid* monastery. [*We strictly prohibited him from daring thereafter to molest the same monastery concerning the liberty of the privilege. But if it were the will of the parties, after sufficiently instructing the cause and remitting it to our presence, they were to set for them a suitable term at which they should present themselves before us to receive sentence.

Therefore, when the parties were afterward established in the presence of those judges and the same bishop had had a copy of the privilege, he wished to accuse it of falsity on the ground that, when the bull of that privilege was compared with other bulls, it appeared, as the bishop proposed, smaller than and dissimilar to the others. He also alleged the authority of a matter adjudged to evacuate the force of the privilege, asserting that Pope Alexander of happy memory, our predecessor, as he showed through Alexander's letters, had promulgated a sentence against the monastery concerning this. The same bishop additionally introduced privileges of the said Pope Alexander and Pope Honorius of good memory, our predecessors, in which it is expressly recognized to have been established that canonical obedience should be rendered to him by the Abbot of Rebais.

But the abbot of the aforesaid monastery proposed in opposition that he ought to enjoy full liberty by authority of the aforesaid privilege, and indeed also for another reason: namely, because Saint Faro, Bishop of Meaux, had determined that a most liberal privilege should be granted to it, as he said was manifestly contained in the legend of that saint. The same abbot added that, until that day, he had never heard any mention of the aforesaid sentence that the bishop alleged for his own party; but even if the sentence were genuine, there had been a tacit withdrawal from it through the amicable settlement that followed. For, as he said, such a settlement intervened between B. of good memory, Abbot of Rebais, and Stephen, Bishop of Meaux, that the same abbot would render obedience to him on this condition: that if the privilege of liberty, which he did not have at hand, were found, the same abbot would enjoy liberty and would be bound in no way to exhibit obedience to that bishop. The same abbot asserted that he would prove this settlement and certain other things that he had proposed.

Therefore, a day having been assigned at Paris, the dean and succentor received the witnesses of the aforesaid abbot, because the third judge could not participate, and at Rebais they examined the same

witnesses and certain other elderly and infirm persons. At length, when your party, to make greater faith concerning Alexander's sentence, presented to the judges the letters of certain cardinals and others, the abbot's party objected that, since a period of six months was comprehended in our letters, within which you had the faculty of proving what you wished, after that time had elapsed you could not exhibit instruments on your behalf or other proofs. But since the approach to proving was not closed to you, it requested that an oath be received, which the chapter of Rebais commanded to be rendered under peril of their souls, namely, that they had never seen before the sentence that you determined was to be exhibited.*]

But when the judges remitted the instructed cause, because we recognized the bishop's reasons to be more efficacious, we adjudged to him the subjection of the aforementioned monastery, so that there he may have *free* power as diocesan bishop, yet in such a way that no prejudice is generated thereby to the Apostolic See, whereby, *at the lawful time,* if it wishes, it may prosecute its justice. For indeed, if the privilege of the aforesaid Innocent was presented to Alexander in judgment and he rendered sentence against it, he is understood to have disapproved *it*. But if it was not exhibited before him, the aforesaid sentence ought not to be retracted under pretext of a newly found privilege. *Wherefore, through apostolic writings, we command your discretion that you cause what has been defined by us by sentence to be observed reasonably, with appeal removed,* [*constraining contradictors, if there are any, etc. Given at Viterbo, on the seventeenth day before the Kalends of July, in the tenth year, 1207.*]

Chapter XXII

Latin source headnote: A sentence from which an appeal was taken is retracted if it is established that the witnesses, upon whose statements alone it was rendered, were conspirators and were received over the party's contradiction.

The same, Alexander III, to the Abbots of Saint Mary in Cagi and of Valsecrète.

When I. and A., canons of Saint Denis of Reims, revealed to our apostolate on behalf of certain canons of the same church that their abbot was multiply defamed concerning dilapidation, perjury, simony, and certain other things, *and when concerning these and other matters they had litigated for a long time at the Apostolic See with the proctor of the abbot himself,* we *afterward* commanded *our venerable brother* the Bishop of Châlons and his colleagues that, personally approaching *that* church, they should correct, both in head and members, the things to be corrected, *with appeal set aside,* and establish the things they should see were to be established. [*Afterward, when both the abbot and the canons were established before them, the same abbot appealed lest the judges proceed in that business against the order of law; and when the judges required from the abbot and canons alike an oath concerning speaking the truth about the status of the church, the abbot, asserting through his advocate that he had been despoiled, petitioned from them the benefit of restitution. Thereupon*] the judges, [*with the will of the parties, restored the abbot himself to the administration of spiritual things and committed the care of temporal things to certain discreet and faithful men. After these things,*] receiving the oaths of the abbot and canons, [*they examined certain of them on the same day, establishing another day for examining others, which each party received gladly. But on the appointed day, while the abbot did not appear before them at all, the Abbot of Saint James of Provins, his maternal uncle, presented himself with open letters concerning ratification. While he in no way contradicted, the judges proceeded in that examination; and when on the following day they were prepared to promulgate sentence, the aforesaid proctor exhibited before them letters in which it was expressly contained that he renewed the appeal that he had interposed*

on the first day. But the judges, considering that the same abbot had tacitly renounced the aforesaid appeal by rendering the oath and undergoing their judgment, especially since the obstacle of appeal was closed off by our letters and an irreparable collapse of that church was feared,] *after taking the counsel of prudent men,* removed the *aforementioned* abbot from the administration of the church itself by sentence, deferring the correction of the members, which they could not then dispatch.

When the aforesaid proctor appealed from that sentence *as iniquitous* to our hearing, [*on the ground that the delegates had declared by interlocutory decision that, for the aforesaid causes, there had been a withdrawal from the appeal; moreover, when the aforesaid abbot and the proctor of the canons recently came to the Apostolic See on account of this, before our beloved son John, cardinal deacon of Santa Maria in Via Lata, whom we gave to them as auditor, the same abbot proposed many things*] *through which he said that* the said sentence was *deservedly* to be disapproved: [*both because those letters by whose authority the judges proceeded had been obtained by suppression of the truth, since the canons through whom they were obtained had made no mention of the threefold sentence of excommunication with which they had been bound by him because they were dice players, frequently entered taverns, and were disobedient to him;*] and because [*after the appeal interposed to us, in the inquiry itself —although a charitable admonition had in no way preceded the denunciation, while he had not yet been restored— and*] the judges proceeded in that business without joinder of issue; and *also* because, receiving the oaths of conspirators against him, *the judges* presumed to proceed to sentence when the depositions had in no way been published before the parties or shown to him.

[*To these things the other party responded that the aforesaid canons could in no way be repelled under pretext of an excommunication of this kind, since, even if that excommunication were established, the same abbot had communicated with them in divine things not only through his proctor, who received common letters with them, but also through himself. Nor could the aforesaid appeal have impeded the judges' process; for when the abbot appealed lest the judges proceed against the order of law, and the judges proceeded according to the order of law in all things, it appears evidently that nothing at all was attempted contrary to that provocation. But even if an admonition had not preceded the denunciation, it is the case that it can be imputed to the abbot if he neglected to allege this at the beginning. The aforesaid party also added that the same abbot ought not to have been restored to temporal things, although he was restored to spiritual things, since a question concerning dilapidation was being held; rather, in such a case, according to the rigor of law, even if he had been found in possession of the administration, he could not undeservedly have been removed as suspect.

Furthermore, it was not necessary that joinder of issue be made before those judges, since long ago issue had been joined at the Apostolic See through the proctors of both parties concerning the same articles, especially since that subtlety is not to be observed in inquiries so that joinder of issue is necessarily required. And this one thing could have sufficed against the preceding citations: that he voluntarily underwent the judgment of inquiry. Although it were also established that the judges received the oaths of conspirators, nevertheless their process ought not to be invalidated from this, since it is not established that they pronounced the sentence by following those persons' statements —especially since the statements of confederates could be received in those matters that in no way touched the abbot. Nor could the depositions of the witnesses be published before the parties or a copy of them be made for the abbot, since he had absented himself through contumacy and the aforesaid proctor had not been sent for defense of the cause but only for renewing the provocation.

When, therefore, that cardinal faithfully reported to us these and other things that were proposed before him,*] because full faith could not be made to us concerning the article of conspiracy, [*through apostolic writings, we*] command your discretion that, *after more fully inquiring into the truth,* if it is established to you that those whose oaths it is established were received by the judges were conspirators, *and* that *this very thing* the abbot wished to prove before them, *and that* the judges, following only their statements when those matters had not been proved through others, pronounced the sentence, then, *with appeal removed,* invalidating their process, you shall proceed in *that* business according to the aforesaid form comprehended in the former letters.

But if he is unable to prove that they were conspirators, or, although this were established, it nevertheless appears that they deposed nothing concerning those things for which the same abbot was removed, or, even if they deposed something concerning them, those things nevertheless had been sufficiently shown through the statements of others, you shall confirm the process of those judges, *with the obstacle of appeal removed.* For although conspirators ought not to have been admitted against the abbot, their oaths concerning speaking the truth about the status of that house could nevertheless have been received, so that faith might be had through their statements concerning other things that in no way touched the abbot, especially since at that time it had not been proved that they were conspirators. [*Moreover, we will and command, etc. Given at the Lateran, on the fifteenth day before the Kalends of April, in the eleventh year, 1208.*]

Chapter XXIII

Latin source headnote: One condemned in an action for injuries is infamous and can be restored to reputation by the Pope. This it says, as it is commonly summarized.

The same, to H. of Castro Guarti.

When you had been convened by Bartholomew in an action for injuries because you said that your horse was not of less value than his hairs, [*Jacob of Guarino and L. of Vico,*] the judges who were taking cognizance concerning this, condemned you in ten solidi. Fearing that their sentence would mark you with infamy, you implored from the Apostolic See the benefit of restoration to reputation. But we, considering that [*almost*] no injury, or only a minimal one, was done, will [*and grant*] that you shall not be marked with infamy through the aforesaid sentence. [*Given at Segni, on the seventh day before the Ides of September, in the fifteenth year of our pontificate, 1212.*]

Chapter XXIV

Latin source headnote: When a sentence has been revoked because of a defect of jurisdiction—as because one of the judges was publicly excommunicated—or because the order of law was not observed, inquiry is made again concerning the principal matter.

The same.

To prove that the proctor of the lady—(*And below:*) Meanwhile, however, take cognizance of the sentence of confirmation that was rendered by the delegated judges concerning the election of the custodian, so that you take care to confirm or invalidate it, as ought to be done by law; in such manner, indeed, that, if it is established that the same sentence is to be invalidated because one of the delegated judges who pronounced it was publicly bound by the bond of excommunication when the sentence was rendered, as is asserted through the metropolitan's letters, or for another just cause,

after it has been quashed you shall take cognizance again concerning the election of the custodian herself, *and, hearing the things that have been proposed and shown both as to the act and as to the person, if the election is found canonical, confirm it by our authority; otherwise, after invalidating it utterly, give the sisters the faculty of freely electing, and confirm by apostolic authority, with the obstacle of appeal removed, the election of the woman whom they have determined is regularly to be elected as their abbess, and cause provision to be made for the aforesaid custodian from the goods of the church for legitimate expenses incurred.*

Chapter XXV

Latin source headnote: A matter adjudged between some persons does not harm others. This fails in the case of one who allowed him to litigate to whom an action or defense belonged in the second place, or from whom he derived his cause in the matter adjudged.

Gregory IX.

Although regularly a matter adjudged between some persons does not harm others, nevertheless prejudice is generated for one who, when an action or defense concerning that matter belonged first to him, allowed a subsequent person to act, and also for one who allowed the person from whom he derived his cause to litigate.

Chapter XXVI

Latin source headnote: If two ordinaries pronounce contrary sentences, the sentence for the defendant holds. This fails in the four cases contained here and similar ones. But if delegated judges disagree, the delegator is to be approached; if arbiters disagree, neither sentence holds.

The same.

When two judges, as we have received, pronounce differing sentences, if they proceeded from ordinary jurisdiction, the sentence for the defendant, not for the claimant, holds, unless in a favorable cause—for example, marriage, liberty, dowry, or testament—it was promulgated for the claimant. But if they proceeded from delegated power, each sentence depends upon the decision of the delegator. But if they proceeded from a compromise, neither ought to have force.

Title XXVIII: On Appeals, Recusations, and References

Chapter I

Latin source headnote: A collation of a benefice made after an appeal interposed from a probable and plausible cause is null by the law itself.

Alexander III, to the Bishop of Exeter and the Dean of London.

Our beloved sons, the prior and clerics of Giseburn, transmitted a grievance *very grave and difficult for us:* that *our venerable brother R.,* Archbishop of York *and* legate of the Apostolic See, suspended that prior after an appeal *made to us, and* interdicted his churches, and declared the canons excommunicated if they obeyed him as prior. (*And below:*) Concerning all *of these things,* if, after the truth has been solicitously inquired into through suitable persons and the reputation of the locality, you find that grants of the churches were made *in such manner,* unless the prior and canons maliciously deferred arranging them insofar as it pertained to them, you shall revoke those grants as invalid, *by*

our authority, notwithstanding any appeal, causing the churches themselves to be restored to the prior and canons and compelling both the vicars and those who swore to their canons to observe the oath rendered, unless it was unjustly extorted by the prior. Being provident, etc. [*Cf. c. 6, On Judgments, II. 1.*]

Chapter II

Latin source headnote: A general appeal with respect to a cause is not valid.

The same, to the Archbishop of Reims.

Among the other things *concerning which you wished to consult us—what you ought to do concerning those who appeal from you and do not prosecute the appeal—we respond thus: that you ought to compel them within a suitable term to prosecute the interposed appeal or to submit to justice before you.* But concerning the fact that the Abbot of Saint Apollinaris in the cloister interposed before you a general appeal concerning every cause that could be moved against him at any time, we reproved him thereupon and determined that an appeal of this kind was not to be admitted. *But if someone specifically appeals from you to us, we do not have power to remit him to your examination.*

Chapter III

Latin source headnote: No appeal is made from lawful correction unless the measure is exceeded. This it says, when the intention of the letter is inspected.

The same, to the Abbot of Saint Peter.

You should know that it has *reached our hearing that, if at any time you wish to correct and chastise your subjects for their excesses according to the Rule of blessed Benedict and the institution of your order, they flee to the remedy of appeal so that they may be able more freely to exercise their malice.* But because the remedy of appeal was not invented for this purpose, that it ought to exhibit protection in his wickedness to someone deviating from observance of religion and order, *through apostolic writings, by way of precept,* we command your discretion that, if at any time any one of your subjects has flown to the remedy of appeal *lest you correct and chastise him for his excesses,* you shall no less on that account correct and chastise him according to the tenor of the mandate contained in the aforesaid rule and the institution of the order.

Chapter IV

Latin source headnote: If an appellant does not prosecute the appeal within the term established by the judge from whom he appealed or by himself, he is compelled to stand by that judge's sentence or judgment.

The same, to the Bishop of Norwich.

You shall *fortify the parsons of the churches situated in your diocese by your authentic writings and those of the lords of the estate in such a way that, when it should happen that any of them dies, the son or vicar of the deceased, or anyone else, cannot by any cunning forestall your course of conferring the parsonship of the vacant church upon a suitable man. But* if any *of such persons* appeals to our hearing *for the sake of frustrating delay* and fixes a protracted term for his appeal, you shall assign him a day within which he can suitably approach the Apostolic See. If he contemns to come to it, you shall then *strictly* compel him to stand by your judgment concerning those things that are in question, without any contradiction, *every excuse and*

appeal ceasing. But if anyone fixes a suitable term for his appeal and nevertheless has not prosecuted the cause by the day of appeal, you shall no less constrain him thenceforth to obey your sentence, with appeal removed, as we said concerning the other. *But if, etc.* (*Cf. c. 20, On Witnesses, II. 20.*)

Chapter V

Latin source headnote: An appellant has a year for prosecuting and, for cause, two years, unless the judge moderates the period. And if he does not prosecute within that time, the sentence remains ratified, or he returns to the first judge if he appealed before sentence. This it says. § 1. One who is assailed concerning a crime can appeal unless the crime is notorious. This it says.

The same, to the Archbishop of Reims.

Since the *most holy* Roman *Church has been constituted by the Lord's ordering as the head and mistress of all churches, and consultations and questions are deservedly referred to it from the diverse parts of the world, we rejoice that you have consulted it concerning various questions of law and not undeservedly commend your prudence. Hence it is that by the present writing* we have determined that a *worthy* response should be made to your fraternity: that, if an appeal has been made *for the sake of frustrating delay or even necessarily* before sentence or afterward, a year is granted to appellants of this kind, or, from a necessary and evident cause, two years, unless perhaps the judge from whom the appeal was taken has moderated a shorter time according to the distance of the *places and provinces* and the quality of the persons and business. If, within that time, the person who appealed has not prosecuted the cause of appeal, the sentence will hold. If he appealed after sentence, he also appears to have fallen from his cause, nor will the appellant be heard further concerning the same business. But if an appeal was taken from a grievance and before entry into the suit, an appellant of this kind will be heard, since the sacred canons allow appeals everywhere even outside judgment; appeals of this kind are not customarily called appeals but provocations to a cause. But if someone appealed before sentence, he is compelled to stand by the judgment of the person to whom he is known to have appealed.

§ 1. Moreover, if the person who appeals is a ravisher or *otherwise* a violent detainer of another's thing, an appeal of this kind made in judgment before ecclesiastical persons is customarily heard, unless perhaps he is a manifest ravisher or fornicator, like the man whom the Apostle excommunicated while absent and without being required. [*To these things, etc. Cf. the following chapter.*]

Chapter VI

Latin source headnote: Before the judge from whom I have appealed in one cause, I can be convened in another, unless I recuse him as suspect.

The same, to the same.

To these things: if someone appeals in one cause and, while the appeal is pending, commits some crime, or is said previously to have committed one, or is now even accused, or is convened concerning another matter about which no appeal has been taken, and it happens that it is brought to the hearing of the judge from whom he [*also*] appealed in another business, he can, if he wishes, avoid him as suspect; otherwise he will be obliged to stand by the judgment of the person *from whom the appeal was taken,* especially if he is his ordinary judge. [*Likewise if to two persons; cf. the following chapter.*]

Chapter VII

Latin source headnote: If, from a lower judge, one person appeals to the Pope and another to an inferior judge, the person appealing to the Pope is bound to appear upon the citation of the inferior judge, at least to allege his appeal; otherwise the process before the lesser judge will be valid, unless he knew that an appeal had been interposed to the Pope. § 1. No appeal is made to the Pope from a civil judge who is not of the temporal jurisdiction of the Church. This it says up to the end.

The same.

If, while two persons are litigating before their own judge, one appeals concerning the same business to our hearing and the other to the hearing of his own judge, and the person who appealed to his own judge, coming on the day of appeal, proposes that he appealed to him—being silent concerning the fact that his adversary had appealed to the hearing of the Roman Pontiff—if that adversary, lawfully cited, neither comes nor sends *any* representative, or otherwise even contemns to obey, *and the judge renders a sentence of excommunication against him,* the sentence of excommunication promulgated against him for contumacy will [*certainly*] hold, unless the judge knew that he had appealed to the hearing of the Roman Pontiff.

§ 1. Finally, as to what you ask *at the end of your questions:* if an appeal has been taken from a civil judge, before judgment or afterward, to our hearing, whether an appeal of this kind holds—it indeed holds in the case of those who are subject to our temporal jurisdiction; but in the case of others, although it holds by custom of the Church, according to the rigor of law we believe that it does not hold. [*Given at Tusculum, on the eleventh day before the Kalends of April.*]

Chapter VIII

Latin source headnote: The lapse of two years does not prejudice an appellant so as to prevent him from being heard for a lawful cause, at least through the benefit of restitution in full. This it says according to the fuller understanding.

The same, to the Parish Priest and Clerics of Saint Nazarius of Albia.

From reason—(*And below:*) But if, after two years had elapsed, you did not prosecute the appeal interposed from the sentence *that had been* pronounced against you *concerning the controversy that you had against the Church of Solaria,* provided it is established that you omitted prosecution of the *appeal* through inability, we will that it ought not to generate *in any way* prejudice to your justice.

Chapter IX

Latin source headnote: If the defendant went to the Curia after citation or notice of the letters, the delegate shall proceed in the cause; otherwise not. This it says, together with c. *It Was Suggested,* below, under the same title.

The same, to the Bishop of Worcester.

We remember—(*And below:* [*Cf. c. 3, Clerics or Those Vowed, IV. 6.*]) But when it happens that some cause is committed to you with appeal removed, and the adverse party after the citation *has been made* enters upon the journey of coming to the Apostolic See, you will nonetheless be able to proceed in the business according to the form of law; but *certainly,* if he entered upon the journey before the citation *was made,* there is no proceeding in any way.

Chapter X

Latin source headnote: Proceedings are stayed, on account of the article in which an appeal was taken, even concerning the principal cause, if it cannot be dispatched without that article. This it says, by adhering to the letter. § 1. Notwithstanding an appeal interposed from a false cause, the judge can proceed to further acts. This it says.

The same.

Concerning the matter about which your solicitude inquired *from us—whether a sentence ought to be suspended through an appeal that often happens to be made from an incidental question, although the cause had been committed with appeal removed*—we have determined that a response should be made to your prudence: that, if a question arises concerning some exception and it happens that an appeal is taken therefrom, proceedings are deservedly to be stayed concerning that exception; and if the principal cause cannot be terminated without it, proceedings are no less to be stayed concerning the principal cause. § 1. But if the adverse party broke forth into an appeal concerning suggestion of falsehood, the sentence is not to be deferred concerning this, *if by the letters of commission the obstacle of appeal is prohibited.* [*On Appeals, etc. (Cf. the following chapter.)*]

Chapter XI

Latin source headnote: An appeal can be taken even for lesser or lighter causes.

The same.

But concerning appeals interposed for the smallest causes, we will you to hold that deference is no less to be given to them, for whatever and *however slight* a cause they are made, than if they were made for greater causes. *But if they contemn to prosecute their appeal, you shall strictly compel them either to prosecute the appeal or, with appeal removed, to stand by your judgment.*

Chapter XII

Latin source headnote: According to the canons an appeal is made even before sentence; according to the laws it is not, except in certain cases. This is the first point. And appeal and recusation are made equivalent in this: that just as a reasonable cause is required in an appeal, so also in a recusation. This is the second. And the time assigned to a judge for deciding a cause begins to run from the time of presentation of the rescript. This is the third, according to the true understanding.

The same.

Concerning the matter *that sometimes delegated judges are recused by one of the parties as suspect, let this become known to your prudence by the present letters: that, since* the sacred canons grant to individuals the faculty of appealing both before and after joinder of issue, in the pronouncement of sentence, and after *sentence,* but the secular laws do not admit an appeal before sentence except in certain cases, in ecclesiastical causes also, where the remedy of appeal is removed, *both remedies are denied; and therefore,* just as no deference is to be given to an appeal, so [*also*] none is to be given to a recusation in any way. But if a suit is committed to *certain persons* to be decided within a certain time, *in such a way that it is contained in the letters that the cause, after receipt of the letters,* [*and*] *within a certain term, ought to be terminated,* the term begins to run from the time when it happens that the judges *to whom the suits are delegated* receive those letters.

Chapter XIII

Latin source headnote: A person convened concerning an injury to a cleric or concerning adultery can appeal unless he is notorious. This it says together with the following chapter.

The same.

It has reached us that, when *priests and other* clerics complain that they have been wounded by some persons or have otherwise been *gravely* injured, *and frequently produce witnesses to prove what they assert, those* who are assailed appeal to the Apostolic See, *but contemn to prosecute the interposed appeal or to avoid the fellowship of men. Hence, because you desire to be made more certain through our letters concerning what you are to do thereupon,* by authority of the present writing we command your fraternity that, if their excess is not public and notorious, you shall compel those *who appeal for such a cause, contradiction and appeal ceasing,* by ecclesiastical censure, to prosecute *the* interposed appeal within a suitable time. But if *their excess* is public and notorious, under pretext of an appeal, *if they have interposed any to foster their iniquity,* you shall not omit to declare them excommunicated, *inasmuch as* [*from*] *the very laying of hands upon clerics they incurred a sentence of excommunication,* and shall cause them to be more cautiously avoided as excommunicated until they make satisfaction to those who suffered injury and present themselves to the apostolic presence with your letters.

Chapter XIV

Latin source headnote: It is summarized above in the immediately preceding chapter.

The same, to the Archbishop of Toledo.

Your fraternity consulted *us whether deference is to be given to appeals when an appeal is made for the cause of frustrating delay and they do not prosecute the interposed appeal. Concerning this, indeed,* we have determined that a response should be made to your consultation: that if *at any time* some persons who are manifestly and notoriously known to detain another's wife or to have laid violent hands upon a cleric appeal, no deference is to be given to their appeal in any way. But since many things are called notorious that are not, you ought to provide lest you appear to hold as notorious what is doubtful. But those who appeal from your presence you ought to compel, within a suitable time, to prosecute the interposed appeal or, with appeal removed, to obey your judgment.

Chapter XV

Latin source headnote: This chapter is summarized above, under the same title, in the chapter *We Remember.*

The same.

It has been suggested to our ears that, when those oppressed *and aggrieved* have recourse to the protection of the Apostolic See and, an appeal having been made, enter upon a journey, their adversaries, knowing of the interposed appeal, neither approach our presence nor transmit a representative *for themselves*; but when they perceive that those persons *have returned and* have brought back our letters, they break forth into the voice of appeal and enter upon the journey of coming to us, so that they may thus elude the solicitude of those by whom they are assailed. *But because no one's fraud ought to protect him, and things that are known to contain in themselves the vice of cunning and fraud are to be cut away by the sickle of apostolic moderation,* we respond to your consultation in this way: if anyone is

discovered to do this from fraud or malice, you shall not defer to his appeal, nor on that account postpone terminating *with a suitable end* the cause committed to you, because you are to know that we issued the decretal letter with which such persons appear to be fortified not to suppress anyone's justice, but to remove an *unjust* grievance.

Chapter XVI

Latin source headnote: An excommunicated person can, while cognizance of the appeal is pending, be absolved as a precaution; and if it appears that he appealed lawfully, he is not punished because in the meantime he celebrated divine services.

The same, to the Archbishop of York.

When R., a priest, came to our presence, we committed your cause and his to the Bishop of Tusculum and P., Cardinal of Santa Susanna, to be heard. At your objection, although R. the priest was not excommunicated by law, they nevertheless caused him to be absolved in fact. *But because we will that what is known to have been established in this part by our brothers be changed for no reason, through apostolic writings, by way of precept,* we command your fraternity that you in no way trouble the aforesaid priest because, after the excommunication made contrary to the appeal, he sang divine services, but, *the appeal ceasing,* restore all things to that status in which they were at the time the appeal *to the Apostolic See* was sent forth.

Chapter XVII

Latin source headnote: If an appellant is disturbed in the possession concerning which the appeal was taken, the judge from whom the appeal was taken can reform that possession for him, while the appeal remains in its state. This it says according to the common understanding.

The same, to the Archbishop of Canterbury.

Since we are bound *to respond to the consultations of individuals insofar as the Lord shall have ministered, we wish to impart a response to you the more gladly, the more we love your person with more abundant charity.* Since, *therefore,* you wished to consult us whether, if the possession of those who appeal to our hearing has been disturbed, it is lawful for you to reform it for them, setting aside that concerning which the appeal was interposed, we respond to your prudence in this way: if a complaint thereupon has reached you, it will be lawful for you to do this in judicial order.

Chapter XVIII

Latin source headnote: A general and vague appeal with respect to any grievance whatever is not valid, but one restricted to a certain cause is. Thus.

The same, to the Bishop and Archdeacon of Bologna.

Your devotion consulted *us that we should make your prudence more certain through our letters whether an appeal interposed from every grievance holds, and therefore* we respond to your consultation in this way: that if *perhaps* someone were generally to interpose an appeal from every grievance that could happen to him, an appeal of this kind ought not to hold. But if *someone* before some judge *were to interpose the obstacle of appeal* concerning every grievance that could be inflicted upon him in one cause, although a general appeal has been interposed, nevertheless deference is to be given to his appeal by the same

judge. *But concerning the fact that you say some persons appeal for purposes of frustration so that they may avoid canonical punishment, and do not prosecute the interposed appeal, we will this to become known to you: that if, because they have appealed from you, you ought to compel them within a suitable and competent time to prosecute the appeal or, concerning those things about which the appeal was taken, with appeal removed, to obey your judgment.*

Chapter XIX

Latin source headnote: A frivolous appeal does not excuse an inferior from being bound to obey a superior and from being punished for contempt, unless he purges his innocence in another way. This it says, and it is a noteworthy case in that it is said that this man is to be punished.

The same, to the Bishop of Zamora.

When we were prepared kindly to admit and efficaciously hear the petitions *that you presented to us through your messenger, our beloved son* I., cardinal deacon *of Santa Maria in Cosmedin,* formerly legate of the Apostolic See, proposed *to us with constant assertion* that, when *he had called you to his synod and* you had contemned to approach at his summons, he promulgated a sentence of excommunication against your person, *after which excommunication you caused yourself to be consecrated as bishop by one who was discharging our place.* And when *our beloved son* N., canon of Saint James, firmly asserted that you were on a legation of the king and therefore could not have approached at the summons of the aforesaid cardinal, the cardinal asserted in opposition that his messenger found you not on a legation of the king but in the Church of Salamanca, *and told you that he was not going to require you in another church. And when it was again proposed on your behalf that, when our venerable brother the Archbishop of Compostela appealed, you also interposed your appeal, the cardinal added that that appeal could in no respect have protected you from being bound to approach at his summons.* But we, considering that it was not fitting for you, under pretext of an appeal, to contemn coming at the summons of the legate, *admonish and* command your fraternity that, either in your own person or through suitable messengers, you present yourself to the apostolic presence, to show your innocence and *immunity,* if you can.

Chapter XX

Latin source headnote: If a mandate made to one who swore to stand by the judgment of the Church exceeds the limits of the oath and of a lawful promise, he will be able to appeal; otherwise it is different. This it says compendiously, according to the Abbot.

The same, to the Archbishop of Canterbury.

To these things—(*And below:*) Moreover, concerning those who render an oath that they will stand by the judgment of the Church and afterward appeal, *the oath having been rendered,* let your solicitude provide that you compel them to observe what they swear, or within forty days after the appeal has been interposed to enter upon the journey to prosecute it.

Chapter XXI

Latin source headnote: The summary is as above, in the immediately preceding chapter.

The same, to the Bishop of Chartres.

To the question [*however*] that you ask—whether deference is to be given to the appeal of one who, as is customary, merits to be absolved after rendering an oath, and, before anything is commanded to him, *has appealed,* or *if,* after receiving a mandate, he appeals for the sake of evasion—we respond *thus:* that, *after he has sworn,* no deference at all is to be given to *his* appeal that ought to derogate from his oath; but he is immediately to be reduced to the same sentence, which ought to be firmly observed until he has received the mandate and, to the extent of [*his*] ability, has prosecuted what was received.

Chapter XXII

Latin source headnote: One who appeals from an ordinary can afterward be punished by that ordinary for an offense committed by him. This it says; but supply to the text that the same applies to offenses committed before, if he is now accused concerning them, as in c. *To These Things* 1 above under the same title, and c. *He Proposed* below under the same title.

The same, to the Bishop of Winchester.

Moreover, concerning those who appeal to the Apostolic See and afterward, committing grave *and enormous* things, protect themselves with the appeal when they are convened, we have determined that *this* response should be made: that, *if after the appeal they commit grave things, and so publicly and manifestly that others are gravely scandalized and the seemliness of ecclesiastical honor is deformed,* the appeal ought not to protect them in their *wickedness and* iniquity so as to prevent their excesses from being punished by canonical censure. *Moreover, concerning those who, bound by a sentence of excommunication, swear to stand by ecclesiastical judgment and immediately, having forgotten it, break forth into the voice of appeal, we signify to your affection that you ought through excommunication to compel them to pursue the appeal made within a suitable time or to stand by the judgment of the Church.*

Chapter XXIII

Latin source headnote: One who did not defer to his adversary's appeal cannot raise an exception against him concerning his own later appeal in the same matter.

The same, to the Patriarch of Grado and the Cardinal Priest of San Vitale.

When *our beloved sons M.,* Abbot of Saint Felix, and the priest R., *and* [*V.,*] *canon of Saint Mark,* were established in our presence for the controversy that arose concerning the election of the Church of Torcello, *through the envy of the malignant enemy*—(*And below:*) Therefore, *through apostolic writings, by way of precept,* we command that, *coming together as one, you summon both parties before your presence and, after diligently inquiring into and learning the truth of the matter,* if *it is established to you that the aforesaid* archdeacon, after the appeal *made to us* and *after* denunciation *also* of excommunication, proceeded to the nomination of the often-mentioned C., and that the primicerius with the canons, and the parish priest with the assent of the [*whole*] clergy of the bishopric, or of the greater and sounder part, elected the aforesaid I. as bishop and pastor, then, notwithstanding the appeal *or prohibition* of the aforesaid archdeacon, if he himself did not defer to the appeal made earlier, you shall confirm by apostolic authority, *with appeal and excuse removed,* the election made concerning the aforesaid I.; *and you, brother patriarch, shall impart to him the office of consecration. But if the matter was otherwise, after summoning the suffragans of the patriarchate of Grado and associating with yourselves other discreet and honorable men, you shall hear the cause and, with the obstacle of appeal removed, terminate it with its due end.*

Chapter XXIV

Latin source headnote: One who appeals from an ordinary in one cause is bound to respond before him in others; he can nevertheless recuse him as suspect, unless he is convened concerning a manifest crime in which no excuse or suspicion has place, as when a penalty of law arising from the act itself is imposed. This it says according to the understanding.

The same, to the Archbishop of York.

M., your cleric, proposed to us that it often happens that, when someone appeals concerning some cause, he *utterly refuses and* declines to respond in other causes in which no appeal has been taken. Concerning this, we respond to your consultation in this way: although on account of that appeal he is no less bound to respond in other *causes* concerning which no appeal has been taken, nevertheless the judge from whom the appeal is made, because he is altogether suspect to him, ought not *in the preceding cause* to compel him to respond concerning other *causes,* unless for a crime so grave and manifest that by the act itself he *is held guilty and* is deservedly to be condemned.

Chapter XXV

Latin source headnote: An excommunicated person is absolved after security has been received, although the adversary or the excommunicator appeals lest he be absolved. This it says according to one understanding, which nevertheless must be limited to when the excommunication was not rendered for manifest contumacy or offense, because then he ought not to be absolved unless satisfaction has preceded, as in c. *On Behalf* 1 below, On the Signification of Words.

The same, to R., Archbishop of Canterbury.

With what countenance you are able to consult us *concerning articles of law* we do not see, since *in those things that are known and clearly manifest* you are said to pervert the order of law *and evidently to oppose ecclesiastical liberty, for which that glorious and illustrious martyr Thomas, your predecessor, did not fear to undergo martyrdom.* For now you are said to confirm elections of bishops, contrary to the due order of law and *contrary to* the dignity of the pontifical office, not in a church, as is canonical and honorable, nor even in a palace, nor in your chamber, but in the *very* chamber of the king. *But lest we appear to deny our assent to your petitions, concerning those things about which you wished to consult us we respond to you as the Lord shall have given to us.*

Indeed, if anyone is held bound by interdict or excommunication for contumacy or any other cause and offers himself to justice concerning those things for which he received the sentence itself, the judge will be able to absolve him lest he die in excommunication, even if the adverse party interposes the obstacle of appeal lest he be absolved—sufficient security nevertheless having been received from him before absolution, that he will obey the equity of law either in the presence of the Roman Pontiff, to whose hearing the appeal is made, if the adversary should prefer, or before the judge to whom the *Roman Pontiff* shall delegate the cause. Concerning those also who complain that they have been subjected unreasonably to excommunication or interdict, we say the same thing, even if those who pronounced a sentence of this kind have determined to appeal to the Apostolic See. *But concerning the fact that, when someone has died, sometimes religious persons, sometimes ecclesiastical persons, and sometimes secular persons demand that debts owed to them, which the deceased himself owed, be paid, and, if they are not paid, send forth the voice of appeal lest the body of the deceased be delivered to burial, we have determined that this*

response should be made to your fraternity: unless sufficient security concerning payment of the debts, provided the estate is solvent, is given to them by the heir or relatives of the deceased, his body is not to be delivered to burial after the appeal.

Chapter XXVI

Latin source headnote: A prelate ought not to suspend or excommunicate a subject unless admonition has preceded, nor can a subject appeal against ecclesiastical discipline, especially if he is religious. And the judge from whom the appeal is made sets a term for the appellant to prosecute the appeal; if he does not prosecute within it, the judge from whom the appeal is made reassumes jurisdiction. But an appellant who does not prosecute his appeal is condemned in expenses, when the appellee prosecutes it.

The same, in the Lateran Council.

A very reprehensible *custom has grown strong in certain regions: that, when our brothers and fellow bishops, or even archdeacons, think that certain persons will appeal in their causes, without any admonition at all having preceded, they render against them a sentence of suspension or excommunication. Others also, while they dread the sentence of a superior and canonical discipline, raise an appeal without any grievance and usurp for the defense of iniquity what is recognized to have been instituted for the protection of the innocent. Wherefore, lest either prelates be able to aggrieve subjects without cause, or subjects at their mere will be able under pretext of appeal to elude the correction of prelates,* by the present decree we establish that neither shall prelates pronounce a sentence of suspension or excommunication against subjects unless canonical admonition has preceded, unless perhaps the fault is such that by its own kind it induces the penalty of suspension or excommunication; nor shall subjects break forth into the voice of appeal against ecclesiastical discipline *before entry into the cause.*

But if anyone believes that he must appeal for his necessity, a competent term shall be set for him to prosecute the appeal; if perhaps he neglects to prosecute within it, then the bishop may freely use his authority. But if in any business someone appeals, and, when the person appealed against comes, the one who appeals neglects to come, if he has anything of his own, he shall make to the other a suitable recompense of expenses, so that, terrified at least by this fear, someone may not easily appeal to the grievance of another. But we will this to be observed especially in *religious places,* lest *monks or any* religious persons, when they are to be corrected for some excess, presume to appeal against the regular discipline of their prelate and chapter, but shall humbly and devoutly receive what has been *usefully* enjoined upon them for their salvation.

Chapter XXVII

Latin source headnote: The judge from whom the appeal is made takes cognizance of the cause notwithstanding the appeal if the appellant does not prosecute. This is the first point. And a judge recused as suspect can commit the cause to another. This is the second.

The same.

To these things, *we have determined that it should be granted to you by the present letters that,* when an appeal has been taken from you concerning some cause, it shall be lawful for you, with the appeal ceasing, to compel the appellants either to prosecute the interposed appeal or to obey the equity of law before

you. Or, if either of the parties holds you suspect, at your insistence they shall choose a judge who may be able to decide the question proposed between them. [*But, etc. (Cf. c. 5, On Judgments, II. 1.)*]

Chapter XXVIII

Latin source headnote: If a canon, admonished to residence, appeals, a term is established for him to prosecute the appeal, and meanwhile the benefice is served through a vicar to be sustained from the fruits of the benefice. And if he does not prosecute the appeal or make residence, he is deprived of the prebend.

The same, to the Bishop of Salisbury.

It has reached us that, when you admonished *Roger, son of* G., a canon of your church, that he should make *due* residence in it, he broke forth into an appeal *to our hearing and prescribed as the term for his appeal the approaching feast of blessed Luke*. But since the said canon appears to have appealed for the sake of frustrating delay, *through apostolic writings, by way of precept,* we command that you *diligently and* earnestly admonish him to make due residence in the same church, *all delay set aside,* or, within the term, to enter upon the journey of coming to us to prosecute it. Meanwhile, however, you shall commit his place in the aforesaid church to some honorable person *to be executed,* and, *with appeal ceasing,* assign to him from the benefices of that canon the means by which he can be suitably sustained. But if the aforesaid G. neglects to fulfill either of these, you shall *then, every contradiction and appeal set aside,* deprive him of his prebend, and, *no appeal being admitted,* grant *and assign* it to another suitable person.

Chapter XXIX

Latin source headnote: No appeal is made from a judge executing jurisdiction.

The same.

Your fraternity consulted us whether deference is to be given to appeals interposed by *our dearest son in Christ L.,* [*the illustrious*] King of the Franks, on behalf of the Jews, so that they may retain Christian slaves, *and whether you ought to tolerate their establishing new synagogues where they had none at all.* [*We therefore wrote to the aforesaid king that he should desist from defending the Jews in this part, and concerning this we also caused him to be admonished through others; and we believe that he will acquiesce in our admonitions, because it would not be right that what was recently established by the holy Fathers in council should be negligently observed.*] *Hence,* it is not fitting that on account of appeals of this kind you ought to abstain from observance of the decree. [*The Jews, etc. (Cf. c. 7, On the Jews, V. 6.)*]

Chapter XXX

Latin source headnote: One who sent a messenger to the Pope before citation or notice of the letters can appeal so that the delegate does not proceed; it is otherwise if afterward.

The same, to the Archbishop of Genoa.

To these things: as you assert, *sometimes concerning a cause that is committed to a judge with appeal removed, one party appeals, asserting that he has sent his messenger to the Apostolic See for the same cause. To this* we respond thus: that the judge, if it is established to him that *the* appellant, before the parties were cited or the delegation of the cause reached the person who interposes the obstacle of appeal, had

sent a messenger to the Apostolic See, ought to defer to the appeal made; but if the messenger was sent after the citation, he can sufficiently execute what is commanded.

Chapter XXXI

Latin source headnote: One who did not defer to an appeal interposed to the Pope is sent to the Curia with the ordinary's letters to be punished.

The same.

Concerning the prior *who, not deferring to our protection and to the appeal made to the Apostolic See, caused a certain canon of his to be stripped of all his garments down to his shirt, and compelled him to renounce the accusation and appeal because he murmured concerning his own and certain brothers' enormities, we have determined to intimate this to your solicitude: after diligently inquiring into the truth of the matter, if you find that the aforesaid canon appealed to avoid discipline, you ought on that account to inflict no penalty upon the same prior, since the most holy Roman Church is not accustomed to admit an appeal of this kind, lest audacity for offending be furnished to monks or regular canons.* But if the aforesaid canon appealed the prior to the Apostolic See on account of his manifest enormities, which render him notorious, and he contemned to defer to such an appeal, you shall compel him to come to the Apostolic See with your letters containing the truth, to make satisfaction for so great an excess. *But upon his accomplices in this wickedness you shall inflict such a penalty that others hearing of it shall not dare to perpetrate similar things.*

Chapter XXXII

Latin source headnote: An appeal does not defend a religious against regular constitutions.

The same.

Because the Lord *chose us for an inheritance for himself and looked out from afar on high, desiring to provide for your peace and tranquility insofar as divine grace grants, by apostolic authority we concede and grant you* that abbots *of your order* who have been publicly bespattered by, or convicted of, some public infamy, and who, after being admonished *by the abbots and* afterward in the general chapter, are unwilling *of their own accord* to yield their prelacy, shall not have the faculty of appealing *to the Apostolic See, defending their guilt through an appeal.* [*Given at Benevento, on the fourth day before the Nones of July, in the second indiction, 1169.*]

Chapter XXXIII

Latin source headnote: The judge from whom the appeal is made can set a term for the appellant to prosecute the appeal; when it has elapsed, the judge reassumes jurisdiction.

The same.

It has *reached our ears through your intimation that, when sometimes we delegate causes to you or others with the remedy of appeal removed, one of the parties, so that he may avoid the examination of the delegated judge, opposes incidental questions and, although the remedy of appeal has not been reserved in the principal cause, nevertheless breaks forth into the voice of appeal, fixing no term for his appeal, and thus causes the other party to remain suspended without prosecution of the appeal. Therefore you petition that it be granted to you and other judges, where causes are committed without the remedy of appeal, to terminate incidental questions with their due end, with appeal set aside. But since incidental questions are often not undeservedly judged prejudicial, we have not*

determined that assent should be given to your petition in this part; but lest either party be afflicted longer by frustrating judgments, a suitable term shall be set for the appellant to prosecute the appeal; if he has not prosecuted the appeal within it, from that time he shall be compelled to stand by the judgment of the delegated *judge, with appeal set aside, both concerning the incidental questions and concerning the principal cause, in such a way that neither shall the common remedy be withdrawn from one, nor shall the other be able to be wearied by frustrating delays.*

Chapter XXXIV

Latin source headnote: If, after a grievance has preceded, someone submits himself to the protection of a superior, he is held as an appellant, provided that he has observed those things that are necessary in an appeal.

The same, to the Bishop of Ávila.

You should know that it has reached our hearing that, when the Bishop of Zamora multiply molested G., priest of the Church of Saint James of Zamora, *which belongs properly to the Church of Compostela,* at length the same priest, *to avoid his grievances,* subjected himself and his church *and parishioners* to our protection *and that of the Roman Church. But the aforesaid bishop, perhaps because he did not expressly appeal, after the protection of the Apostolic See had been invoked, and even contrary to the privilege granted to the Church of Compostela, promulgated a sentence of excommunication against him.* Although the aforesaid priest perhaps did not express the word of appeal from simplicity, nevertheless, because after he had subjected himself and his things to our protection he ought not to have been condemned by any sentence without cognizance of the cause, *through apostolic writings* we command your fraternity that you *inquire more diligently into the truth concerning this, and,* if it is thus established to you, declare that the sentence that the aforesaid bishop rendered against the same priest does not hold, *with contradiction and appeal ceasing. But afterward, if the aforesaid bishop perhaps wishes to act against the priest, you shall hear the cause and decide it with its due end. You shall also more earnestly admonish and induce the same bishop to desist altogether from the molestations and grievances of the Church of Compostela, and so to be content with his own right that he shall in no way presume to usurp those things that belong to the aforesaid church.*

Chapter XXXV

Latin source headnote: A cause is not to be remitted to the judge from whom the appeal was taken while the appeal has not yet been justified, unless by consent of the parties.

The same, to the Archbishop of Tarragona.

Having received the complaint of the canons of Pamplona *that the beloved son the Duke of the Navarrese had despoiled them of their goods, at their petition we determined that the cause itself should be committed to your fraternity and terminated with a canonical end. But because they were silent to us that an appeal had been taken from your hearing to the Apostolic See, and we would not have committed the cause itself to your examination if this had been established to us, since* a cause ought not to be remitted to those from whom it is known that an appeal was taken unless the parties have consented *to this, through apostolic writings we command and more strictly prohibit your fraternity from proceeding in any way in execution of that business on occasion of our letters.*

Chapter XXXVI

Latin source headnote: Even a delegate appointed with the clause "with appeal removed" can be recused if he is a blood relative of the impetrant or if he was his advocate in that cause.

Lucius III, to Walter, Bishop of Lincoln.

Finally, by the present letters we intimate to your fraternity that, if *some* cause has been delegated to someone who is a blood relative of the person who impetrated the letters, or has discharged the office of advocate in the same business, or is suspect from any *other* just cause, a delegate of this kind will not undeservedly be able to be recused, although the business was delegated to him with appeal removed.

Chapter XXXVII

Latin source headnote: A sentence of interdict is not suspended through a subsequent appeal.

The same, to the Bishop of Norwich.

To these things: because some persons established under interdict appeal and afterward contemn to observe it, you wished to consult what is to be observed in this case. You should know, therefore, that, just as they cannot be excommunicated after an appeal, so they cannot avoid an interdict to which it is established they were subjected before the appeal.

Chapter XXXVIII

Latin source headnote: The judge of appeal remits the appellant and the cause to the first judge unless it is established to him that an appeal was taken from a grievance or an unjust sentence.

Clement III.

Since in the [*Church of God, according to the diversity of orders and honors, the jurisdiction of those presiding sometimes varies among subjects, and our venerable brothers the bishops exercise the power conceded to them in rendering the rights of subjects and peoples, it happens that, considering not justice but the liberty of their own will, seeking the things that are their own, not those of Jesus Christ, they avoid the judgment and power of the bishops themselves, usurping the refuge of appeal, whose aid, to be interposed justly for the protection of the innocent, is recognized to have been instituted.*] But we received *a complaint through the grievance of our venerable brother the Bishop of Lincoln transmitted to us* that certain clerics of Gual., *not compelled by necessity of grievance nor burdened by the weight of any oppression, but under the sole pretext of casting off from themselves the yoke of ecclesiastical discipline, so that they may more freely rage in the liberty of their error and iniquitous purpose, send forth the voice of appeal from his hearing and,* on occasion of your judgment, which they boast that they wish to observe, avoid without reasonable cause the cognizance of the Bishop of Lincoln, their ordinary judge.

Hence, [*because both canonical and civil laws introduced the refuge of appeal not for the defense of iniquity but as a remedy for the oppressed and those unjustly condemned, according to the statutes of the Lateran Council an appeal of subjects of this kind is not to be admitted, which is not extended except where the worthy correction of prelates may be eluded; and it is recognized to concern all who, by the Lord's ordering, are called into a share of the solicitude of the churches that each person's rights be preserved inviolate,*] *through apostolic writings* we command your discretion that, if at any time it happens that any of the *aforesaid* clerics appeals from the aforesaid bishop to your hearing, you shall neither *provide him a hearing nor* admit his appeal before it is

established to you that it was extended either from a grievance or from an unjust condemnation; otherwise you shall remit him to the hearing of the aforesaid bishop, with appeal removed, to obey his judgment *in the just examination of his discussion. For thus the contumacy of the wicked will be restrained, and the honor due to fellow bishops, through observance of fraternal reciprocity, will remain in its liberty.*

Chapter XXXIX

Latin source headnote: If an appellant who does not prosecute returns to the judge from whom the appeal was taken and is again aggrieved, notwithstanding the first abandonment he can appeal again. This it says, and it is a noteworthy case, according to Panormitanus.

The same.

Your letters directed to us showed that, when a cause concerning a certain marriage was being treated in your presence, in which the man's party objected a bond of consanguinity, and the woman's party had appealed to the Apostolic See and had not prosecuted her appeal by the appointed term *for its prosecution and for receiving the apostoli when the term arrived,* afterward, when she renounced the appeal that she had made, you, proceeding in cognizance of the cause, received testimony concerning the kinship. But because the woman's party appealed again, you petition *us* to be instructed whether you have power to proceed to the calculus of sentence. We respond, therefore, that, although according to the decree of the Lateran Council, after an appellant has not prosecuted his appeal within the term established for prosecuting the appeal, you can freely use your authority, nevertheless, because she appealed again, since according to the laws it was lawful for her to appeal twice in the same cause, she made herself exempt from your jurisdiction—especially since here the man's intention proceeds toward separation of a marriage, which is a favorable matter, *and nothing is to be done unless it lacks suspicion and is judged irreprehensible by law. But another judge will be able to terminate the same cause, according to God and the enactments of the canons, according to the statements of the witnesses who were rightly admitted after renunciation of the first appeal, and other things, if any, that can still be produced in the same cause.*

Chapter XL

Latin source headnote: A sentence of excommunication, suspension, or interdict rendered under a condition is suspended if an appeal was taken before the occurrence of the condition. This it says by adhering to the words of the letter, so that it may thus satisfy every reading. And it is a subtle and very much allegeable decision.

Celestine III.

Moreover, we were asked: if some judge has pronounced sentence thus, "Unless you make satisfaction to Sempronius within twenty days, know yourself to be excommunicated, suspended, or interdicted," *and* the person against whom [*such*] a sentence is rendered, appealing in the intervening time, has made no satisfaction by the appointed day, whether he is bound by such a sentence or remains protected by interposition of the appeal? It appears to us that the obstacle of appeal ought to impede a sentence of this kind. [*Given at the Lateran, in the third year, 1193.*]

Chapter XLI

Latin source headnote: If several connected articles are committed by a rescript and appeal is removed in one, it is understood to be removed in the others also. This it says. § 1. The cause of suspicion is to be proposed before the judge who is recused and proved before arbiters. This it says.

The same.

Second, you ask: when several articles have been placed in one commission, and only in one does it happen that appeal is expressly prohibited, whether an appeal holds if an appeal has been taken concerning the others? Concerning this we respond to you that, since according to blessed Gregory words serve intention, and this is our intention—that concerning all the articles that are placed in *our* commission justice shall attain its effect *notwithstanding appeal*—appeal is understood to be interdicted in all. For it makes no difference whether [*appeal*] is prohibited first or second, in the middle or at the end, since, as the *express* arguments of each law teach us, *both* those things that are at the beginning *of rescripts* often happen to be referred to the middle and the end, and those that are in the middle to the end and the beginning.

§ 1. Third, you petition to be instructed *whether, when someone recuses a judge as suspect, he ought to allege a cause of suspicion and is bound to prove the cause, unless it is manifest, before the same judge; and also whether the judge can proceed in that judgment and business if the person who objects the suspicion is unwilling or unable to prove its cause in law.* We respond to your consultation in this way: when someone proposes that he holds a judge suspect, he is bound to allege the cause of suspicion before that *judge, lest anyone else be able, at the decision of his own will, frustratingly to avoid any judgment whatsoever.* But the parties, through that judge *who is named as suspect,* ought to be compelled to agree upon *some one judge or upon* some persons not very remote. If the cause of suspicion is not proved before *him or* them within a competent term, then at length the judge shall use his authority. But if the cause *of that* suspicion is proved before those *upon whom agreement is made,* the recused *judge* will be bound to stay cognizance of the cause.

For reason itself dictates, *and it is proved by very many examples,* that suspect and hostile persons ought not to be judges, *since, as a decretal constitution asserts, no one can give anything more welcome and pleasing to an enemy than if he has committed to him for assailing the person whom he intends to injure and damage. Moreover, you propose in the fourth place this other question: whether a judge can take cognizance by his office whether an appeal was taken for purposes of frustration or from a reasonable cause, and, if the appellant has not objected a reasonable cause of appeal or has not proved the one he objects, whether the judge is bound under pretext of this appeal to cease from cognizance of the cause. Here it does not please us to define otherwise than has been defined by our predecessors and those skilled in each law. For it is provided in the law that, when an appeal has been interposed, whether it has been received or not, nothing ought to be altered in the intervening time. Canonical constitutions no less hold that those who wish, or for whom it is necessary, to flee to the Roman Church as to their head may appeal without any impediment, to which indeed it is granted that they may go freely without any calumny, custody, excommunication, or despoiling; it permits appeals everywhere according to the sanctions of the holy canons. Therefore, when a judge has before him a cause that he recognizes has thus been suspended through an appeal, he shall abstain as quickly as possible from cognizance of the cause.* [*Therefore, fifth, etc. (Cf. c. 21, On the Office of a Delegated Judge, I. 29.) Given at the Lateran, on the fifteenth day before the Kalends of July, in the third year of our pontificate, 1193.*]

Chapter XLII

Latin source headnote: Neither the judge nor the adversary is bound to defer to an appeal to which the appellant did not defer.

The same.

You determined to consult us through your messengers whether deference is to be given to the appeal of one whom his adversary is prepared to convict immediately of a despoiling committed against him after an appeal had been lawfully interposed. We respond *therefore* that, since one is to be punished in that in which he offended, one who neglected to defer to an appeal renders himself unworthy of the benefit of appeal, *whence we judge that deference is not to be given to him when appealing either.*

Chapter XLIII

Latin source headnote: It has two understandings. According to the first it intends this: a mere executor is not recused, nor is an appeal made from him, unless he exceeds the measure, especially if he is appointed with the clause "with appeal removed." According to the other understanding, this it says: there is no withdrawal from a suspect judge through appeal unless he exceeds the measure.

Innocent III, to the illustrious King of the Franks.

He who is ignorant of nothing knows—(*And below:* [*Cf. c. 7, On the Office of a Legate, I. 30.*]) Moreover, the cardinal himself did not issue the *said* sentence of interdict but rather published it; nor was he its author, but more truly its executor. Hence, since according to *canonical and civil law* no appeal can be taken from executors unless perhaps they exceed the measure in executing, and we also took care in the letters directed to him concerning this to prohibit the obstacle of appeal, no deference was to be given to the appeal interposed from him. But concerning the objection of suspicion, although we believe that he was deservedly not suspect to you, nevertheless, even if he had been, he ought not on account of the appeal interposed to have desisted from that to which he proceeded not by his own motion but rather by our precept.

Chapter XLIV

Latin source headnote: If an appeal is received by the judge or approved by the party, the term fixed for prosecuting it obtains the place of a peremptory citation, so that proceedings are taken against the absent person as though he had been cited peremptorily; nor can such a term be anticipated by either party.

The same.

It often happens that, when an appeal is made to our hearing, suits that could easily have been terminated remain undecided on account of the default of one party who prosecutes the interposed appeal neither through himself nor through a suitable representative, or perhaps through the malice of a representative who afterward conceals his procuratorial mandate, although frequently a question of law is moved, for which necessary proofs to the contrary do not exist before us, and sometimes also a question of fact could lightly be proved with the parties present. Hence, although it was established in the Lateran Council that, if in any business someone appeals and, when the person appealed against comes, the person who appealed neglects to come, he shall make to the other a

suitable recompense of expenses, so that, deterred at least by this fear, someone may not easily appeal to the grievance of another, nevertheless, because questions are no less prolonged on this account, *wishing that an end be imposed upon suits and that fraud and deceit support no one, by the counsel of our brothers,* by the present decree we establish that, if an appeal of this kind has been either received by the judge or approved by the party, after the term fixed for the appeal it shall obtain the force of a peremptory edict, in such a way, namely, that from then proceedings shall be taken against the absent person just as if he had been called to judgment peremptorily.

But if perhaps the interposed provocation was maliciously neither received nor approved, when it is established that a lawful provocation was made, we will that it no less obtain force, saving the constitutions promulgated concerning those provoking after sentence: if they take no care to prosecute their appeals, after the term fixed for prosecuting the appeal the sentence that had been suspended by the appeal remains ratified. But whatever could be proposed by an absent person against a peremptory citation may be alleged against an appeal of this kind. But if anyone, anticipating the term of appeal and concealing the truth, has impetrated letters, he shall both lack the letters impetrated and not escape the penalty of contumacy. We will this, however, to be observed in conducting suits or judgments.

Chapter XLV

Latin source headnote: When an appeal has been abandoned through the appellant's negligence, the judge can proceed by office in cases in which his office abounds. And it is a very noteworthy case.

The same, to the Bishops of Limoges and Cahors.

Established in our presence, *the beloved son G.,* Archdeacon of the *Church* of Clermont, explained to us that, when *formerly* the deanery of Clermont was vacant, *the abbot, the cantor, and* certain canons *of Clermont* transferred their votes to the *venerable brother, the Bishop of Clermont,* and the bishop, with certain others expressly consenting, conferred the deanery upon the same archdeacon, although only eleven canons had first appealed that no one should be assumed as dean without the assent of all, while [*other*] twenty-five consented to his election, partly through themselves and partly through the mediation of the bishop. And when *the beloved son P., cardinal priest of the title of* San Marcello, then legate of the Apostolic See, made his passage through those regions, not so that he might derogate from the appeal interposed *to us* but so that he might transmit the instructed cause to us, he delegated its examination to *the beloved sons,* the Abbots of Saint Giles and Saint Andrew, and commanded them to cite to himself the party contradicting the election of the dean, to show in his presence the cause of its contradiction. *When, therefore, the aforesaid cardinal had faithfully reported to you the things proposed before him,* it was therefore understood through the assertion of *the aforesaid G.,* Cardinal *of San Marcello,* that an appeal had been made under this form—namely, lest proceedings be taken in the election of the dean without the assent of all—and that the appellants had not prosecuted the appeal within a year, nor was there a reason that two years should be granted to them, since, just as twice within the lawful time they sent a simple messenger to the Apostolic See, so they could have sent a suitable proctor at least once.

Nevertheless, lest we appear to pass over in silence the peremptory exceptions proposed on their behalf, *through apostolic writings* we command your fraternity that you *inquire more diligently into the truth concerning these things; and,* if it is established to you that the archdeacon voluntarily renounced the

bishop's act upon which he relies, or that the aforesaid bishop proceeded to his election while omitting the aforesaid things without which it is proposed that it had been agreed that he should not proceed in that transfer of votes upon which the archdeacon relies, you shall impose silence upon him concerning *that* deanery; otherwise you shall declare *by our authority, with the obstacle of appeal removed,* that the nomination or election thus made concerning the other person, and whatever followed from it, is invalid and empty.

Chapter XLVI

Latin source headnote: Against a person elected or confirmed, who awaits no other right, an exception or appeal is not regularly admitted, especially a frustrating one to impede the effect of election or confirmation; but, after possession has been obtained, he will be able to be accused or denounced. This it says, and according to this it is a noteworthy case.

The same, to the Chancellor of Metz.

When *the beloved son I.,* Dean *of the Church* of Saint-Sauveur, and *the beloved son E.,* Cantor of Metz, *and D., scholasticus of the same church, your proctors,* were established in our presence, we took care to grant them a kindly hearing. But it was proposed to us on your behalf, as also *our venerable brother* the Bishop *of Metz intimated to us through his letters,* that, when the provostship of Saint-Sauveur was vacant and the day for the election had been fixed, *the aforesaid D. bishop, understanding that the votes of the brothers were divided into two parties—*(*And below:*) through the Father and the Son and the Holy Spirit, in virtue of obedience and under peril of their souls, adjured the canons that, according to God and according to their conscience, they should elect *only* one of the two toward whom the parties *already* appeared to have extended their eyes, the one whom they deemed more useful and suitable for the church. But the dean with two deacons and three subdeacons nominated the said cantor, *his kinsman of the greater church,* as provost. But the cantor himself, who discharges the priestly office, and the custodian with the scholasticus and Master B., priests, two Levites, and five subdeacons concordantly elected you; and the aforesaid bishop, since the honesty of your person was established, confirmed your election as made by the greater and sounder part of the chapter. And when he wished to extend to you the house and investiture, as is customary, the dean appealed to the Apostolic See, alleging only inability against you.

Although the bishop did not believe that deference was to be given to an appeal of this kind, since Pope Alexander of happy memory, our predecessor, established in the Lateran Council that, unless something reasonable has been objected and shown by the fewer and inferior persons, with appeal removed, what was instituted by the greater and sounder part of the chapter shall always prevail and attain its effect, nevertheless, humbly and devotedly deferring to us, he ceased from the investiture. But it was proposed in opposition that the dean, who obtains the greater place in the aforementioned church, with the two more senior deacons and three subdeacons from among the elders of the church, understanding that the provost ought to exercise the administration of temporal things, and that therefore he is more useful for this who is deemed more powerful, with good zeal nominated the aforesaid E. as provost, a man knowing how to provide for the church and powerful to protect its rights and possessions, if necessary, with a strong hand and an outstretched arm. Hence, when the other party, although greater in number, nevertheless inferior in authority, nominated you as provost, proposing that you were, as it were, utterly powerless in those regions in which the possessions of the provostship exist, both on account of this *and because it held the bishop suspect by law, it appealed to the Apostolic See,* adding that it would object other things to you in our

presence, which it was then unwilling to explain in the presence of the suspect judge; *but the bishop, not deferring to the appeal, nevertheless confirmed the nomination made concerning you.*

We therefore, *having heard these and other things that had been proposed on this side and that,* because it was evidently established that the cause of appeal that was *set out and* expressed was not reasonable, but the dean then neither *objected nor* expressed another, although he said that he wished to object another before us, *by the counsel of our brothers* decree that the effect of your confirmation ought not to be impeded by the things that were proposed. Nevertheless, if he should determine to propose anything against you not in the manner of an exception to impede the effect of the election and confirmation, but in the manner of denunciation or accusation, after you have obtained peaceful possession of the provostship itself, we do not deny him license to propose it.

Chapter XLVII

Latin source headnote: An appeal can be taken if a place not safe for the parties is assigned, even if "with appeal removed" is written.

The same, to the Bishop of Worcester.

On your behalf *it was proposed before us that, since there are manifest enmities between the English and the Welsh, and passage to those regions is dangerous for the English because of the dangers of the roads and the war that is recognized to be frequent or continual between those peoples, many who distrust the merits of their cause sometimes strive by authority of our letters to draw you or your men before judges established in Wales, so that thus you may abandon even the most just causes undefended or undergo a settlement equally unjust and damaging. Since, therefore, we will the causes that we commit to be terminated with their due end in such a way that neither party is aggrieved contrary to justice, to your fraternity* by the present page we respond [*thus:*] that, since one who, although cited, cannot come safely to the presence of delegated judges is honorably excused, whenever it happens that you or your men are summoned before judges to whose presence it is dangerous for you to go, you will freely be able to appeal *to the Apostolic See,* even if in the letters of *our* commission the remedy of appeal has been closed, unless the *same* judges assign you a suitable and safe place. [*Given at the Lateran, on the tenth day before the Kalends of May, in the fifth year of our pontificate, 1202.*]

Chapter XLVIII

Latin source headnote: A defendant lawfully appeals if he is not heard when objecting that the claimant's proctor does not have a sufficient mandate, or that he was previously convened through other letters of which no mention is made in the second. This it says with regard to the title.

The same, to the Bishop, Dean, and Precentor of Hereford.

The beloved son John, master of the Hospital of York, signified to us *that, when P., formerly rector of that hospital, had closed his last day, our venerable brother the Archbishop of York, to whom and to whose predecessors the ordering of the same hospital had belonged from antiquity, unwilling that it should sustain loss from the want of a rector, placed over it as rector the said I., a priest of the same house unanimously elected by his brothers, hoping that the house itself would receive increase through him both in temporal and spiritual things. But in the course of time, the dean and chapter of the Church of York, as though the ordering of the same hospital belonged to them, wishing to remove the master himself from the office of his administration, impetrated apostolic letters concerning this to the Dean of Lincoln and his fellow judges, by whose authority they caused both the archbishop and the rector*

to be called into law. Therefore, when the parties were established before those judges on the day peremptorily assigned to them, the judges committed their places to others, reserving only definitive sentence to themselves.

Furthermore, the Chapter of York, by authority of certain letters on whose seal was contained the seal of the chapter only for citations, although that chapter is known to have another seal, constituted through *it* a certain person as claimant. But although the same master alleged that *the same* person ought not to be admitted as claimant on occasion of those letters, and additionally added that, by authority of certain letters obtained by us *concerning this* to other judges, he had been convened earlier and ought not to have been convened through later letters in which no mention was made of the former, nevertheless the judges were unwilling to admit exceptions of this kind; on account of this he sent forth the voice of appeal to us. Wherefore, *through apostolic writings* we command your discretion that you *inquire more diligently into the truth concerning the foregoing, and,* if it is established to you that an appeal was taken to our hearing on account of the said causes or *one* of them, after revoking as invalid whatever you know was done after an appeal of this kind, you shall *summon the parties to your presence and diligently hear, with appeal removed, the things that they determine to propose on this side and that.* [*Given at the Lateran, on the second day before the Ides of May, 1284.*]

Chapter XLIX

Latin source headnote: A defendant lawfully appeals if he is not heard when petitioning that the thing sought in the libellus be declared.

The same, to Master G., Archdeacon, and Wnormannus, canons of Soissons.

Through the signification of the brothers T. and R. it was declared to our apostolate that, when a question concerning a certain land was being conducted before delegated judges between them on one side and V. on the other, since they had several lands, they petitioned the judges that the land concerning which the question was being conducted should be shown to them. When the judges refused to do this, they provoked to our hearing. Wherefore we command that, if it is so, after restoring to the due state whatever, if anything, you know was attempted after the appeal, etc.

Chapter L

Latin source headnote: The judge from whom the appeal is taken cannot establish a term for finishing the appeal; but if he does so, he is understood to have established it for presenting oneself.

The same, to the Bishop of York and the Abbots of Luc. and Mont-Molli.

From the intimation of *the beloved sons,* the prior and canons of Saint Barbara, it became known to us that, when a question concerning a certain manor was being conducted before an ordinary judge, *not by our delegation,* between them on one side and V., chamberlain of Tangar. *in the Diocese of Rouen,* on the other, and the same chamberlain appealed from *that same judge* to our hearing, fixing *no* term for *his* appeal, the said judge—who appeared to favor his cause because a certain cleric, a table-companion of his, had been advocate in the same cause for the *already-said* chamberlain—*deceitfully and contrary to custom* fixed this term for the appeal: that by the feast of the Purification *of blessed Mary* each party was to have returned from prosecution of the appeal. Yet he could not impose a law upon us that we should be bound to dispatch it within the said term, since also, according to lawful sanctions, a suit that is expected to be introduced in the prince's consistory remains untouched without detriment from delay until he causes it to be introduced and decided by the nobles according

to custom. Meanwhile, however, the messenger of the *aforesaid* chamberlain, anticipating their messenger and not waiting for him until the lawful term, impetrated letters and withdrew. But because fraud and deceit ought to protect no one, *through apostolic writings* we command your discretion that, if it is so, after summoning the parties, you shall hear the cause *and, after hearing the things proposed on this side and that, terminate the cause concerning them by means of justice, with appeal removed.* [*Given at Rome, on the fourth day before the Ides of February, 1205.*]

Chapter LI

Latin source headnote: One who appeals outside judgment from plausible and probable causes lest he be molested in possession, if he is afterward despoiled, is restored before all things to the state in which he was at the time the appeal was sent forth. This it says by adhering to the words of the letter and so that accommodation may be made for every reading, according to Panormitanus.

The same, to the Bishops of Rochester and London.

When O. de Camera of good memory, parson of the Church of Faversham, entered the way of all flesh, *the beloved son* the Abbot of Saint Augustine of Canterbury, first through certain monks and second through himself, entered possession of the same church, which he asserts belongs to him, and more than once sent forth to us the voice of appeal lest anyone presume *unduly* to molest him concerning possession of that church. And when he had peacefully possessed the aforesaid church for some time, certain laymen of the Diocese of Canterbury, *rashly laying violent hands upon that abbot and the monks within the same church, even to the shedding of blood,* violently cast them out of possession of the church itself.

[*We therefore, hearing of the savagery of the aforesaid laymen and wishing with paternal solicitude to provide for the abbot and monks concerning so great an injury inflicted upon them, firmly commanded our venerable brother the Bishop of Ely and his fellow judges that, if the matter stood thus, with appeal removed, they should publicly declare those laymen and their accomplices excommunicated and command them to be more strictly avoided by everyone until they made suitable satisfaction to those who suffered the injury and presented themselves to the apostolic presence with the testimony of their letters. By our authority, under threat of anathema, they were also more strictly to prohibit anyone from presuming, in the cities, towns, villages, and other places to which it should happen that they came, to celebrate divine services in their presence, except baptism of infants and penances of the dying, or to exchange anything with them under the appearance of any contract whatsoever. We added no less in the mandate that, after removing any unlawful detainer from that church, notwithstanding anyone's precept and with the obstacle of appeal removed, they should reduce and preserve the aforesaid abbot and monks in that state in which they had been before the violence was attempted.

Meanwhile, however, when the dean of the place obtained possession of the same church through induction by the laymen who had violently cast out the monks, the beloved son the Archdeacon of Canterbury afterward began to possess the same church, and, converting its fruits to his own utility, still perseveres in the same possession, as is said. Therefore, when in the presence of the aforesaid judges the proctor of the aforementioned abbot insistently petitioned for restitution of the said church, after the archdeacon had been removed from it, so many exceptions were opposed on this side and that, so many delays were granted, and so many byways of escape were invented that, after a

very long space had elapsed from the time the commission was made, since the cause did not have its due process, the abbot and the often-mentioned monks took care to impetrate other letters from us. In them, reproving those judges because they had deferred so much to frustrating appeals and frivolous exceptions that the cause had not yet been able to have process under their examination—wherefore the abbot and monks had been compelled to undergo, besides great injuries and losses, no less grave labors and expenses—we strictly commanded those judges that, all favor and fear set aside and the obstacle of any contradiction and appeal removed, they should through ecclesiastical coercion compel the party adverse to them immediately to join issue. They were to take care to receive and examine within two months after joinder of issue the witnesses whom either party should determine to produce concerning both the principal matter and any incidental matter, in such a way that, if they could not participate personally, they should nevertheless execute this through others, from whom no appeal would in any way be lawful. But after the attestations had been received, they were to fix for the parties a competent term at which they should present themselves to our presence to receive sentence.

Therefore, after receiving the later mandate, the same judges, advancing the business according to its tenor, when witnesses had been admitted after joinder of issue, at length, after the attestations had been published, established for the parties a day on which they should appear in our presence to receive sentence concerning this. They transmitted to us the attestations and acts and also other things that appeared to contribute to the cause, enclosed under their seals, as they had in mandate. Therefore, when the beloved son ..., a monk and proctor of the Abbot and Monks of Saint Augustine, approached the Apostolic See at the appointed term and by our mandate waited for the proctor of the other party for almost three months, and at length both were established in our presence, the aforesaid monk proposed that, when the abbot and monks, as was aforesaid, enjoyed peaceful possession of the Church of Faversham, after an appeal had more often been lawfully interposed to us they were violently cast out of it. On that account he petitioned more insistently that, after any unlawful detainer had been removed from it, we deign to restore to them possession of the church itself, with the fruits both received and to be received, also to be calculated from the time of the ejection.

He also sought the expenses of forty marks and more that the abbot and monks were compelled to incur on occasion of certain exceptions that the archdeacon's proctor had proposed for purposes of frustration, and of the competent delays for proving them, since that archdeacon or his proctor afterward did not prove those exceptions. For since the aforesaid O. de Camera possessed the said church in another's name, inasmuch as he rendered for it a certain pension each year to the Abbot and Monks of Saint Augustine, and since it was also proved through several witnesses that, after O. Medicus had been taken from the midst until the substitution of O. de Camera, the Abbot of Saint Augustine had custody of the aforesaid church, after the death of the aforesaid O. de Camera that possession was continued, since it was apprehended by the monks immediately after his death. Furthermore, since an appeal was made by that abbot while he possessed the church itself, both before the ejection and afterward, nothing ought to have been altered while the appeal was pending. He said that it was no obstacle that the archdeacon is alleged to have done this for the sake of preserving his right, because, since a question concerning this had already been moved and it was denied on behalf of the abbot that he had jurisdiction of this kind, through the denial the matter was made doubtful. Hence he could not be judge, since he had already become adversary; and therefore,

since he presumed to pronounce law for himself in his own cause, he deservedly ought to suffer detriment from his act, and it is fitting that the matter be recalled to its former state.*]

But the proctor of the *aforementioned* archdeacon proposed in opposition that, when a parson of a church dies, only its custody is given; indeed, the *Canterbury* archdeacons who existed for the time being had always used this right, both by common law and by the general custom *of the Province of Canterbury,* as much in that church as in all others of the same diocese. *As had been sufficiently proved, such restitution in no way belonged to the monks, nor did he appear to do them injury by using his own right.* Furthermore, *since* the aforesaid O. *de Camera* possessed the same church in the name of the archdeacon, inasmuch as each year he paid him one procuration and five solidi in the name *of that* church, *when the same O. had been taken from the midst, possession in intention is recognized to have remained with the archdeacon; it is not lost unless the archdeacon thought that he could be repelled or unless, upon coming, he had not been admitted. Thus, therefore, the possession of the monks ought rather to be called clandestine detention, since the archdeacon did not lose that possession. And thus the monks could not have it, since two persons cannot possess anything wholly. Therefore, since the archdeacon could enter possession by his own right and cast out the de facto holders, all the more could he, when no one was there and no one resisted in any way, reserve his own right for himself, since the execution of a right is recognized to contain no injury.

To these things, the monks cannot in any way call away the possession of the archdeacon, even if it were established that they had it, because, since he in no way cast them out of possession, and this was neither proved nor confessed in law, they have nothing to object against an external detainer, especially since they themselves entered possession by their own authority and, doing injury to another,* [*for the monastery*] *were unable to acquire any right. The appeal also that the monks allege they interposed was utterly null, since an appeal ought to be made only from a present, past, or future grievance. But the archdeacon had neither previously aggrieved them nor aggrieved them after the appeal, since he is known to have undertaken custody of a vacant thing that he has a right to guard—indeed, which by office he is bound to guard. Finally, no deference at all was to be given to the monks' appeal because, even if the same church belonged to them, they ought [nevertheless] not to have entered possession of it by their own authority, especially since they knew, or rather ought to have known, that custody of vacant churches belonged to the archdeacon and that, if the same archdeacon had then been present, he would have denied it to them and retained it for himself, as pertained to his office. Since, however, their possession was clandestine, they could not be held as true possessors, since no injury concerning possession can be done to a clandestine possessor.*

Therefore, after diligently inspecting the foregoing, we decree that the aforesaid abbot and monks are to be reduced to that state in which they are known to have been at the time the appeal, lawfully interposed to us from plausible and probable causes, was made, saving the right of either party concerning ownership; and we judge that the fruits received in the intervening time are likewise to be assigned to them. *Wherefore, through apostolic writings, we command your discretion that, with the obstacle of any contradiction and appeal removed, you reduce the aforesaid abbot and monks to that state in which they are known to have been at the time of the appeal, and cause all the fruits of the intervening time likewise to be resigned to them, restraining contradictors, if there are any, or rebels, after admonition has preceded, through ecclesiastical censure, with appeal set aside.* [*Given at Rome, at Saint Peter's, on the eleventh day before the Kalends of December, 1205.*]

Chapter LII

Latin source headnote: Entering upon a journey has the force of an appeal if those things that ought to be observed in an appeal are observed. This it says according to one intrinsic understanding.

The same, to the Priors of Saint Augustine and Saint Gregory.

The beloved sons I. and H., messengers [*of the beloved sons*] the prior and monks of the Church of Canterbury, *humbly* reported to us that, when they were sent by the said prior and monks to the Apostolic See for the cause being conducted between *the prior and monks themselves* and *our venerable brother* the Archbishop of Canterbury concerning the chapel of Lamede, *as was proposed to them,* the same archbishop, after they entered upon the journey, promulgated a sentence of excommunication against them. But since it is more to provoke to the Apostolic See by deed than by word, and, when they came to the Roman Church on account of the said cause, a provocation to the Apostolic See is understood to have been made, *through apostolic writings* we command your discretion that, if it is so, you declare that the said I. and H. are not bound by the bond of excommunication, *with appeal set aside.* [*Given at Perugia, on the third day before the Ides of September, 1198.*]

Chapter LIII

Latin source headnote: Through the clause "with appeal removed," every appeal that is not expressly granted by law is prohibited. This it says up to § *But.* § 1. Although an excommunicated person appeals from the excommunication, he can nevertheless be denounced and despoiled of the revenues of a benefice. This it says.

The same, to the Bishop of Ely.

The diligence of the pastoral office—(*And below:* [*Cf. c. 28, On the Office of a Delegated Judge, I. 29.*]) You asked, *also diligently,* whether, when *appeal* is prohibited in a rescript, only a frustrating appeal appears to be prohibited, *so that it is lawful to appeal from every grievance, or every appeal appears to be excluded, except only in cases expressed by law.* We therefore, considering that a business ought not to be impeded through a frustrating appeal even if it had not been prohibited, respond *briefly to your diligence* that every provocation is understood to be removed that is not expressly granted by law; but if an appellant has been unjustly aggrieved, a grievance of this kind will be able to be amended by a superior.

§ 1. But because frequently someone is for a time exempted through a lawful appeal from the power of his judge with regard to some certain article, you consulted us whether, if someone bound by a sentence of excommunication, before its denunciation, has taken care to provoke from it as less than reasonably promulgated, in a case in which an appeal before sentence would have obtained force, on the ground that through the interposed appeal the jurisdiction of the excommunicator appears to have lain dormant, he can denounce that person and for a time despoil a cleric of ecclesiastical benefices, *since through a provocation made in such manner the excommunication is not deprived of its effect.* We therefore respond *to your inquiry* that, since excommunication brings execution with it, and the excommunicated person is not bound more fully through denunciation, you can *not undeservedly* denounce him as excommunicated, so that he may be avoided by others. And ecclesiastical revenues are *indeed* deservedly withdrawn from him to whom the communion of the Church is denied. [*But*

when, etc. You petitioned, etc. (Cf. c. 29, On the Right of Patronage, III. 38.) Given at Rome, at Saint Peter's, on the fourteenth day before the Kalends of January, 1204.]

Chapter LIV

Latin source headnote: If an appellant to a superior appears before an inferior judge concerning matters touching the appeal itself, he appears to renounce that appeal. But if he protests that on this account he does not intend to renounce the appeal, he is not to be heard as one alleging contraries, unless it is notorious that the act concerning whose amendment he approached the inferior was unjust. This it says, and it is a good case.

The same, to the Bishop of Paris.

You execute the solicitude of the pastoral office *prudently when you petition to be instructed by a response of the Apostolic See concerning doubts of law.* Indeed, when, as we received *from your intimation,* while two persons were litigating before their bishop, one of them appealed to the Apostolic See, the bishop, *not deferring to the interposed appeal but* reckoning the appellant contumacious, bound him with the bond of excommunication. Before *his* metropolitan, he petitioned that justice concerning this be exhibited to him concerning the bishop, asserting that after an appeal had lawfully been interposed to us the bishop excommunicated him *and caused him to be publicly denounced as excommunicated,* and petitioning that he be reduced by the metropolitan to that state in which he had been at the time of the appeal—namely, that he be declared absolved—adding also that he did not renounce the objected appeal but wished to prosecute it. *Hence your fraternity asked us whether the metropolitan has power to take cognizance of a complaint of this kind, and, if he finds that the man lawfully provoked, whether he ought to declare him absolved, and whether, if the bishop appeals before the archbishop lest the person who had been excommunicated by him be absolved, deference is to be given to an appeal of this kind.*

We therefore respond to your inquiry thus: just as the metropolitan has altogether no power to take cognizance of an appeal interposed to us, so neither does he have power concerning those things that had been altered after *that* appeal, provided that cognizance cannot be taken of them unless cognizance is taken [*also*] of the appeal at the same time, or of those things that are recognized to touch the cause of appeal. In that case, if the metropolitan should perhaps presume to interpose his part for taking cognizance, the bishop *certainly* could fly to the benefit of appeal. For it pertains to the office of the person who is to take cognizance of the appeal prudently to correct the things that he finds attempted contrary to it. But if it *perhaps* were notorious that the bishop's mandate had been indiscreet or unjust, which the subject was not bound to obey, and consequently it was evidently clear to him that the subject lawfully provoked, the archbishop can by metropolitan authority declare that the subject was unreasonably struck by the sword of anathema.

But when the excommunicated person who had appealed lodges a question against the bishop before the archbishop according to the prescribed form, *namely, that he take cognizance of the injury inflicted upon him by the bishop,* the metropolitan *himself* can interpose his part to take cognizance of the cause, since that person appears tacitly to renounce prosecution of the appeal. But if by word or deed he protests that he wishes to prosecute the appeal, *as is expressed above in the proposed case,* he is not to be heard as one petitioning adverse things and contrary to himself. [*Given at Rome, at Saint Peter's, on the second day before the Ides of December, in the tenth year, 1207.*]

Chapter LV

Latin source headnote: Through an appeal lawfully interposed, the principal matter with its accessories is transferred to the judge of appeal, and sentences of excommunication and interdict rendered after the appeal do not hold.

The same, to the Bishop and Cantor of Troyes.

When the beloved sons the Dean of Auxerre and Master R., proctor of *our venerable brother* the Bishop of Auxerre, were established in our presence, the same master proposed *before us* that, when the said bishop caused R., a priest of the House of God [*of Mont-Attrito,*] in which *the same bishop* is recognized to obtain *provision and* full administration, to be detained and committed to chains because he refused to restore certain goods of the same house that he had furtively taken away—on account of which he had also been bound by the same bishop with the bond of excommunication—and the aforesaid dean admonished the bishop that he should restore to him, or at least provisionally release to him, the aforementioned priest, whom he firmly asserted belonged to his jurisdiction, [*the same bishop, alleging several reasons why he said he was in no way bound to this, utterly refused to restore or provisionally release the same priest. He proposed that concerning this he was prepared to exhibit justice to the same dean in his own court, since the dean was his vassal, or before arbiters to be chosen in common, or even before the metropolitan. But the dean, altogether refusing these things, began gravely to threaten that he would do something that would displease the bishop. On account of this,*] the bishop, fearing lest the dean attempt something to his prejudice, subjected himself and his men and the status of *his* church and city to the protection of the metropolitan and appealed to his hearing, *fixing the recently past feast of Saint Mary Magdalene as the term for the appeal.*

But after a short time the dean, *having summoned the canons of Auxerre,* promulgated an interdict of this kind, *although they contradicted,* that, while the bishop was present in the city, divine services should cease in the Church of Auxerre. But afterward, when on the day fixed for the appeal the parties appeared before the official of the Court of Sens, the dean alleged that he had determined not to defer to the appeal interposed by the bishop because the aforesaid priest was still held in chains when he sent forth to us the voice of appeal. The official, however, judged invalid the interdict promulgated by the dean after the bishop's appeal *interposed to the metropolitan see,* [*and enjoined upon the chapter of the Church of Auxerre that it should in no way observe that interdict. And when afterward, while the bishop was present, the dean firmly prohibited singing in the church and, binding G., the bishop's chaplain who was singing there after an appeal had been interposed to us, with the bond of excommunication, impeded divine office in the church, and, although admonished more often by the bishop, did not desist from disturbing the office, at length the bishop struck him, as contumacious and incorrigible, with the sword of excommunication. Afterward our venerable brother the Archbishop of Sens publicly declared that he was to be avoided. Hence the proctor himself petitioned us that, judging the aforesaid sentence of interdict invalid, we should cause the sentence of excommunication rendered by the bishop to be observed inviolably until worthy satisfaction.

But the dean proposed in opposition that, when the bishop caused R., a priest belonging to his jurisdiction, to be detained in chains, and he himself had been gravely reproved by both clerics and laymen of the city as though he neglected to defend a right belonging to him—he who was bound to observe the customs of the church by an oath rendered concerning this—he admonished the bishop through himself to restore the priest himself to liberty, being prepared sufficiently to show that the

same priest belonged to his jurisdiction, and at length caused the same bishop to be admonished through several others that he should render or provisionally release the priest to him, or at least place him in sequestration. And when the bishop could not be inclined to any of these, after summoning the chapter the dean, with its connivance, placed an interdict of this kind upon the church: that while the bishop was present in the city there should be an utter cessation from divine services in the church. He nevertheless suspended execution of the sentence until he should have a discussion concerning this with the archbishop, who was soon to come into the city, through whom he hoped that concord could be reformed.

But although afterward, when the archbishop was present, he admonished the bishop to accept one of the aforesaid modes for liberation of the priest, he could accomplish nothing with him; rather, the bishop appealed to the hearing of the metropolitan see, fixing the aforesaid term for his appeal. Hence the dean, returning to the chapter, enjoined upon all the canons that they should observe the interdict as it had been placed by him. But on the day fixed for the appeal, the dean, appearing before the official of Sens with the bishop's proctor and fearing that a grievance threatened him, appealed to the Apostolic See, establishing *Laetare Jerusalem* as the term for his appeal and subjecting himself and his status and that of the Church of Auxerre to the protection of the Apostolic See. But when, after these things and while the bishop was present, the dean publicly declared G., a cleric of the same bishop, excommunicated because he had violently seized two clerics, and commanded the clerics to observe the sentence of interdict rendered by him, the bishop promulgated a sentence of excommunication against the dean himself, declaring him excommunicated to the often-mentioned archbishop and the Chapter of Sens. On that account the archbishop, by the counsel of certain persons, publicly declared him to be avoided, although certain canons of Sens, led by sounder counsel, did not avoid communion with him.*]

From these things, therefore, and others that were proposed before us on each side, we understood evidently that, although the bishop would have provided prudently and usefully if he had provisionally released the often-mentioned priest to the dean, to cut away altogether every material of scandal, nevertheless, because the same bishop, *as was premised,* expressed diverse modes according to which he was prepared to exhibit justice to the dean concerning the seizure of the priest, and appealed to the metropolitan see, the dean could not after this render a sentence of interdict. And therefore, *by the counsel of our brothers,* we decree invalid and empty the sentence itself promulgated by him after the appeal had been lawfully made, notwithstanding *that* which the dean, as though varying, proposed *before us* for his excuse: that, before the bishop appealed, *he himself* had rendered the sentence, whose effect he had *nevertheless* determined should be suspended for a time, since in the meantime, after the appeal was interposed, he ought not to have proceeded to execute the sentence.

We judge temerarious, *however,* the process of the official who, after the appeal *to the Apostolic See had been interposed,* decreed that such a sentence of interdict was invalid and empty *and commanded that it be observed in no way,* since, after an appeal had been interposed to us, nothing ought to have been altered. Furthermore, although at first appearance the sentence of excommunication promulgated against the dean by the bishop appeared to have been rightly rendered, *because,* when it had been prohibited through the *already-said* official that the interdict be observed in the church, the *same* dean, by prohibiting celebration in the church, appeared to disturb divine office, nevertheless, because through the appeal interposed to us on behalf of the dean, to which the official also determined to

defer by granting the apostoli, not only the principal business but also the accessories were referred to our examination, we decree that the same sentence promulgated after an appeal of this kind lacked force, *and that the dean himself was not bound by it*.

But although the archbishop, *circumvented by the counsel of certain persons,* after the aforesaid appeal, which had become known to him through the letters of *his* official, declared that the dean was to be avoided, nevertheless we judge inculpable the canons of Sens who, led by sounder counsel, communicated with him, so that they deferred more to the appeal interposed to us than to the denunciation made by the archbishop. [*But because, etc. Given at Rome, at Saint Peter's, on the fourth day before the Ides of January, in the tenth year, 1207.*]

Chapter LVI

Latin source headnote: After the Pope recalls some cause to himself, a process afterward made by a lesser judge is not valid, just as it would not be valid if a lawful appeal had been taken from him. This it says, so that every reading may be satisfied.

The same, to the Archbishop of Milan.

That our judgment may go forth from the countenance of God—(*And below:* [*Cf. sole c., That Ecclesiastical Benefices, III. 12.*]) We commanded the judges that, if *even* after the second mandate, through which we recalled cognizance of the whole business to our judgment, they learned that delivery of the seal to the said H. had been made by you, they should declare it invalid and empty, prohibiting him from presuming to use it in any manner, since it is more for the Roman Pontiff to recall some business to himself than for anyone to provoke to him concerning some business. *But we tolerated, etc.* (*Cf. sole c., That Ecclesiastical Benefices, III. 12.*) [*Given at Perugia, on the ninth day before the Kalends of October, 1198.*]

Chapter LVII

Latin source headnote: If the other party anticipates a term established by a person for prosecuting an appeal, impetrating letters while concealing this, the letters are not valid; but even the appellee can anticipate the term of law, provided that he does not run too far ahead. And where danger threatens from delay, even when neither party prosecutes, the judge to whom the appeal is taken can supply the defect by compelling the parties to prosecution.

The same, to the Abbot of Saint Felix and G., Canon of Bologna.

Your letters offered to us contained that, when certain judges to whom the cause being conducted between the parish churches of Sambro and Rinocor. had been committed by the Apostolic See *without the remedy of appeal* pronounced sentence for the parish church of Sambro, and its proctor appealed to us without a term on behalf of the parish church of Rinocor., and neither had deference been given to the appeal nor had a term for prosecuting it been assigned to the parties by the judges, the parish priest of Sambro impetrated our letters to you concerning observance of the aforesaid sentence, as it had been reasonably rendered. Afterward the other party impetrated from us other letters of commission to other judges concerning invalidating [*or confirming*] the same sentence, no mention of the former letters having been made in the later. Hence, recalled into doubt whether the later judges or you ought to take cognizance of it, you wished to consult us concerning this, [*adding nevertheless that it had been proposed by certain wise men on behalf of the appellant that, since in

such an article he has by benefit of law a year within which he can execute the suit by himself or jointly, in the intervening time he could prosecute the same appeal at his own decision whenever he wished, nor ought he to be compelled to it before the same space of time had run. Therefore they asserted that the first letters were of no validity, even though no mention of them had been made in the second.

But on behalf of the other party certain other learned men in law were said to have maintained that, since it was in that party's interest that the sentence should not remain suspended for so long and its confirmation be deferred, and the judges who pronounced it determined that the aforesaid appeal was not to be admitted, both because it had been prohibited by us and because it appeared frivolous, the party appealed against could lawfully have impetrated letters of this kind in the meantime—especially since, if it were said otherwise, churches would sometimes sustain grave loss, since in ecclesiastical causes according to the canons it is lawful to appeal whenever a grievance or another just cause occurs. Hence it could happen, if in this way a year were given to everyone provoking, that a cause would not attain its due effect for six or eight years. Certain others were additionally of the opinion that the first letters, not the second, were valid, but that the party who had appealed was not bound to prosecute his appeal within a year.*]

Therefore, although a year is granted by law to one lawfully appealing from a sentence, or [*even*] two years from a just cause, to prosecute the interposed appeal, nevertheless, because a term of this kind can be restricted not only by the person provoking but also by the judge from whose sentence the provocation is made—since it was established for this purpose, not that the term itself cannot be anticipated, but lest it be capable of extension—we believe that a distinction is to be made as to the case in which letters are impetrated. And indeed, when a certain term is fixed by the appellant or judge for prosecuting the appeal, if the appellee, concealing it, impetrates letters, letters of this kind, as surreptitiously obtained by concealment of the truth, ought to obtain no firmness. But if no *certain* term has been fixed by the judge or appellant, the party appealed against will be able, within the term established by law, provided that he does not run too far ahead so as to supplant the appellant in impetrating the commission, to impetrate letters of commission, by whose authority lawful proceedings shall be taken in the cause of appeal, in such a way that, if the appellant wishes to proceed in the cause of appeal, he will be obliged to act under the judge thus obtained, unless he can lawfully recuse him.

But if the *appellant* is unwilling to act, the appellee can nonetheless prosecute the cause itself, especially if he perceives that a grievance threatens him from the delay. The superior judge also, if he sees that danger threatens from delay, can and ought, when neither party prosecutes the appeal, to intervene so that the danger may be avoided. For example, if a provocation was made from a sentence rendered concerning confirmation of some bishop-elect, and each party wishes to defer prosecution of the appeal even [*up to*] a year, the superior judge to whom the appeal was taken certainly can—indeed, ought—to moderate the term providently, lest the Lord's flock long lack the care of a pastor. From these things, therefore, you should know that a response has been made to your consultation: through the later letters no derogation is made from those first lawfully impetrated, through which proceedings can be taken, with reason preceding, to confirm or invalidate the sentence. [*Given at Viterbo, on the seventh day before the Ides of July, in the twelfth year, 1209.*]

Chapter LVIII

Latin source headnote: When the other party is contumaciously absent, the judge of appeal can define even the principal business if the appeal was taken after joinder of issue.

The same.

Through your letters you asked *us* whether, if an appeal has been made to the Apostolic See *under someone's examination* after sentence was rendered, or at least after the depositions of the witnesses were published *and read,* those who are delegated by us concerning these things can, if one of the parties is unwilling to present himself to their sight, terminate by judicial calculus the cause delegated to them. We therefore respond to your consultation in this way: since issue concerning the same business was lawfully joined before the first judges, the delegated judges, when the person convened absents himself through contumacy, will be able, when the merits of the cause are clear to them, to define the business committed to them.

Chapter LIX

Latin source headnote: A noteworthy and famous chapter, having many new sayings limiting each law; and, in sum, this it says, by adhering simply to the words of the letter: one appealing before sentence is bound to express a reasonable cause before the very judge from whom the appeal is taken, nor is an exception admitted that he had previously sent a messenger to the Apostolic See or that he had impetrated letters that have not yet been presented to the judge.

The same, in the general council.

That due honor may be deferred to judges and that provision may be made for litigants concerning labors and expenses, we establish that, if someone convenes an adversary before a suitable judge, the latter shall not provoke to a superior judge before sentence without reasonable cause, but shall prosecute his justice before that judge, notwithstanding that he says he sent a messenger to the superior judge or *even* impetrated letters from him before they were assigned to the delegate. But when he believes that an appeal is to be taken from a reasonable cause, after a probable cause of appeal has been set out before the same judge—namely, such a cause as, if it were proved, ought to be reputed lawful—the superior shall take cognizance of the appeal. And if it is established that he appealed from that judge less than reasonably, the superior shall remit him to the inferior and condemn him in expenses to the other party; otherwise the superior himself shall proceed, saving the constitutions concerning greater causes to be referred to the Apostolic See.

Chapter LX

Latin source headnote: If the judge from whom an appeal is taken from a grievance revokes it, he can proceed in the principal cause.

The same, in the same council.

Since, when a cause ceases, its effect ceases, we establish that, whether an ordinary or delegated judge has pronounced something by threatening or by interlocutory decision by whose execution one of the litigants would be aggrieved, and, using sound counsel, has desisted from the effect of an interlocutory decision or threat of this kind, he shall freely proceed in cognizance of the cause, notwithstanding that an appeal was taken from such a threat or interlocutory decision, provided that

he is not lawfully suspect from another cause, lest the process of the business be retarded by frivolous occasions.

Chapter LXI

Latin source headnote: One wishing to recuse a judge ought to propose the cause of suspicion before that judge and prove it before arbiters to be chosen in common. If it is not proved, the judge uses his jurisdiction in the principal matter; but if it is proved, he remits the business to the superior or commits the cause with the consent of the recusing party. (*Moreover, etc.*:) In notorious matters an appeal is not admitted. In doubtful matters a probable cause is to be expressed before the judge that ought to be reputed lawful; if the appellant does not prosecute it, the judge from whom the appeal was taken shall proceed in the cause. It is the same if he prosecutes and does not prove. This constitution, however, is not extended to regulars. This it says.

The same, in the same council.

Since it is provided by a special prohibition that no one shall presume to promulgate a sentence of excommunication against anyone unless competent admonition has preceded, wishing also to provide lest perhaps the person admonished be able under pretext of a frustrating recusation or appeal to avoid examination by the person admonishing, we establish that, if he alleges that he holds the judge suspect, he shall assign before the same judge the cause of just suspicion, and he with the adversary—or, if perhaps he has no adversary, with the judge—shall choose arbiters in common; or, if *perhaps* they cannot agree in common, without malice he shall choose one and the other another, who shall take cognizance of the cause of suspicion. And if they are unable to agree upon one sentence, they shall call a third, so that what two of them decree shall obtain the strength of firmness. And they should know that they are bound to execute this faithfully by the strict precept enjoined by us in virtue of obedience under attestation of divine judgment.

But if the lawful cause of suspicion is not proved before them within a competent term, the judge shall use his jurisdiction. But if it is lawfully proved, the person recused shall, with the assent of the recusing party, commit the business to a suitable person or transmit it to the superior, so that proceedings may be taken in that matter according to what is to be done. Moreover, when the person admonished flies to the obstacle of appeal, if his excess is manifest by the evidence of the matter, by his confession, or by another lawful mode, since the remedy of appeal was instituted not for the defense of iniquity but for the protection of innocence, no deference is to be given to a provocation of this kind.

But when the excess is doubtful, lest the appellant impede the judge's process by the refuge of a frivolous appeal, he shall set out before the same judge a probable cause of appeal—namely, such a cause as, if it were proved, ought to be reputed lawful. And then, if he has an adversary, within a term to be moderated by the same judge according to the distance of places, the quality of the time, and the nature of the business, he shall prosecute the cause of appeal. If he takes no care to prosecute it, from that time the judge himself shall proceed notwithstanding the appeal. But when no adversary appears, since the judge proceeds by his office, if the cause of appeal is proved before the superior, the superior shall execute the office of his jurisdiction. But if the appellant fails in its proof, he shall be remitted to the person from whom it is established that he appealed maliciously. But we will that these two foregoing constitutions not be extended to regulars contrary to their special observances.

Chapter LXII

Latin source headnote: If a judge wishes to hold as joinder of issue an advocate's confession revoked on the same day, or ratifies a process made by a subdelegate of a subdelegate, a lawful appeal is taken.

Honorius III, to the Dean, Chancellor, and Cantor of Lincoln.

When, while the proctors of both parties were established at the Apostolic See, we committed to *our beloved son* R., cardinal deacon of Sant'Angelo, to be heard the cause being conducted concerning the Church of Holiseth between *the beloved sons* the abbot and brothers of the Valley of Saint John *of Croston, of the Premonstratensian Order,* on one side, and the prior and canons of Newstead *in the Diocese of York* on the other, *P. and B., proctors of the aforesaid abbot and brothers, established in his presence, insistently petitioned that, approving the process of the Abbots of Rievaulx and Bellalanda and the Prior of Malton, to whom the cause itself had been delegated by Pope I. of good memory, our predecessor, we deign to terminate by sentence the cause itself, which had already lasted for so long. But W.,* proctor of the aforesaid prior and canons, proposed *in opposition* that *issue had not been joined before the aforesaid judges, but they had proceeded wrongly and abruptly. For* when, *on the appointed day, the same man, appearing* before the subdelegates of the delegated judges, petitioned for delays to propose dilatory exceptions, because his advocate, led by error, responded that the Church of Newstead had peacefully *and quietly* possessed *that* church concerning which the question was being conducted for forty years and more, although on the same day he corrected the advocate's error and, lest through it any prejudice be capable of being generated against him because dilatory exceptions are to be proposed before joinder of issue, revoked before the same judges the advocate's response, which appeared to contradict his petition. Nevertheless, the judges, believing through an erroneous response of this kind by the advocate that issue had been joined, proceeded *not only rashly* to the reception *and examination* of the witnesses of the other party, *but also, adding grievance to grievance, when they had delegated the examination of certain witnesses to the Prior of Vellebeum and his fellow judge, who subdelegated their places to others contrary to canonical sanctions, they less providently approved the reception and examination of witnesses made by those persons in fact, although they were unable to do it by law. On account of these grievances an appeal was taken to the Apostolic See on behalf of the aforesaid prior and canons. Hence the same proctor insistently petitioned that we declare the process of the aforementioned judges invalid and empty. But because full faith concerning the foregoing could not be made to us, with the assent of the proctors of both parties,* we command your discretion that, if the said prior and canons *of Newstead, within three months after receipt of the present writing,* lawfully prove *before you* that the advocate's response was revoked on the same day by *their aforesaid proctor W.,* because thus by consequence issue was not joined, *since the proctors of the other party also acknowledged that issue had been joined in no other way than through the response of the said advocate alleging prescription of time,* or that the *first* delegates, *namely the Abbot of Rievaulx and his colleagues,* approved the witnesses received by the subdelegates of their subdelegates, *as is proposed by the other party,* although, *according to canonical and lawful sanctions,* no one except a person delegated by the prince has power to delegate a cause to another, then, provided that these things were expressed in the appeal itself, you shall declare invalid and empty whatever was done by them after their appeal.

Chapter LXIII

Latin source headnote: It does not suffice for an appellant to show that he opposed a lawful and true exception and appealed unless he shows that he appealed because the exception was not admitted. This it says, and it is a noteworthy and everyday case.

The same, to the Dean and Treasurer and P., Canon of Saint Peter, of Zamora.

When our beloved son G., our chaplain, was granted by us as auditor to D., a priest, and I., proctor *of the bishop, and G., proctor* of the Chapter of Salamanca, the proctor of the chapter, *for himself and the proctor of the bishop himself,* proposed before him that, when the said priest impetrated from us executory letters concerning his reception in the Church of Salamanca to the Archdeacon of Ciudad and his colleagues, and *the parties* were established before them *as executors,* it was alleged on behalf of *the bishop and* chapter that, since in that church there was a certain number of canons confirmed by oath, of which no mention was made in the letters directed to them, they ought not to proceed against them through those letters; and, lest they do otherwise, an appeal was taken to our hearing, *certain other lawful causes having been assigned. But those executors, having contemned an appeal of this kind, pronounced a sentence of excommunication against the bishop and chapter. Wherefore the aforesaid proctor petitioned that the sentence itself be declared invalid and that the said priest be restrained concerning this from the vexation of the same bishop and chapter.* (*And below:*) Therefore, although through the confession of *the* priest himself made before the aforesaid auditor it was established that the Church of Salamanca had a certain number of canons confirmed by oath, and that an exception of this kind had been proposed before the *aforesaid* executors, and *also* that an appeal had been taken from them, nevertheless, because it was not established that an appeal had been taken on account of the nonadmission of an exception of this kind or another lawful *cause,* we command *your discretion* that, if it is established to you that the aforesaid exception concerning such a certain number of canons confirmed by oath, or other lawful exceptions, had been proposed before those executors and not admitted, and that for this reason the party of *the bishop and* chapter appealed, you shall declare the process of those executors invalid and empty.

Chapter LXIV

Latin source headnote: An appellant who fixes a term for the appeal, if he sends a proctor only for impetrating and contradicting, and the appeal was received by the judge or approved by the party, is condemned in expenses to the adversary lawfully prosecuting. This it says according to the common understanding, although the gloss thought otherwise.

The same, to the Archdeacon of Saint Andrew and Master Canon of Melten.

When Nicholas, a knight, and Brother E., a monk of the Monastery of Saint Mary *of Drundanian, of the Cistercian Order in the Diocese of Whithorn,* were established at the Apostolic See, we granted them as auditor *our beloved son S.,* cardinal deacon of Saint Africanus. In his presence, since the said monk had been constituted proctor only for impetrating and contradicting, *as was evidently established from the letters of the said abbot and convent,* the same knight humbly supplicated that we ought to proceed against them as contumacious, *and to command certain persons that, lawfully condemning them to repair his damages and expenses because, while he personally prosecuted the appeal sent forth, they sent a less suitable proctor to prosecute it, after he had first been restored as should be just, they should hear those things that the aforesaid knight should reasonably determine to propose against the aforesaid abbot and convent. But because full faith concerning the foregoing could not be made to us, with the assent of the knight and the aforesaid monks,* we command your discretion that, if it is established to you that the said abbot and convent fixed a term for their appeal and did not send a sufficient proctor to prosecute it, while the aforementioned knight personally prosecuted it, you shall condemn them to restore to that knight the expenses incurred

from the time of the appeal; *and, after he has first been restored as shall be just, you shall hear the cause and terminate it with its due end, with appeal removed.*

Chapter LXV

Latin source headnote: It is not lawful for the same person to appeal a third time from the same sentence.

The same, to the Bishop of Mantin. and P., Canon of Tuscania.

R., tutor of the children of the late B., a citizen of Tuscania, showed us by his petition that, when a question concerning a certain sum of money *and other things* was being conducted before *R., then* judge *of the county* of Tuscania, *not by apostolic delegation,* between him on one side and F. for himself and Peter *Campumallus,* tutor *of B.,* the late son of B., *their fellow citizens,* on the other, the same judge promulgated definitive sentence for that R., which was twice confirmed by judges delegated by the Apostolic See. But *although Peter Picheta, Canon of Tuscania, to whom we are said to have committed execution of the sentence itself, lawfully inducted him into possession of certain houses and other things, because* the other party, which had appealed once and a second time *from the cognizance of other delegates,* sending forth the voice of appeal to us a third time *contrary to lawful sanctions,* obtained from us that cognizance of the sentence itself be delegated to *the beloved son* P., Canon *of San Severino in Tuscania,* and his colleague, *they, as they were more than duly hostile toward him, cast him out of the aforesaid possession contrary to justice.* And when *our beloved son* R., cardinal deacon of Santa Maria in Cosmedin, appointed by us as auditor to each party concerning the appeal sent forth to us a third time, declared by interlocutory decision that they could not by law appeal a third time, by *our letters* we commanded the aforesaid P. *of San Severino* and his colleague that they should in no way attempt to proceed in that business.

Chapter LXVI

Latin source headnote: An appeal interposed with the intermediate judge omitted does not devolve the cause when an exception is opposed. This it says according to the common understanding.

The same, to Master G., Archdeacon, and the Official of Limoges.

The beloved sons the prior and convent of Lac-Rouge showed us by their transmitted petition *that, when a question concerning a certain wood and other things was being conducted before Master A., Canon of Clermont, not by apostolic delegation, between them on one side and F. of Hambaro, a knight of the Diocese of Clermont, on the other, the same knight, frustratingly sending forth the voice of appeal to our venerable brother the Archbishop of Bourges, obtained that the cause concerning these things be delegated to the Official of Bourges. Before him,* it was proposed by way of exception on behalf of the said prior and convent that, since an appeal had been taken to the *same* archbishop with the diocesan bishop omitted, to whom appeal should have been made by degrees, he *could not and* ought not by law to proceed in the cause itself. But because the *said* official of the archbishop refused to admit an exception of this kind *by them,* they appealed to our hearing. *But he, contemning their appeal, rendered sentences of suspension and interdict against them.* Wherefore we command *your discretion* that, *if you find that the said* sentences were rendered against them after an appeal of this kind, you shall declare that *they* utterly do not hold.

Chapter LXVII

Latin source headnote: If one who has ceased to be a tutor is unwillingly convened in the name of the pupil, he will be able to appeal.

Gregory IX, to H., Master of the Scholars, and G. de Rupe, Canons of Saint-Audomarus in the Diocese of Thérouanne.

On behalf of M., Lady of Colb., a complaint was offered to us that, when a woman, the Lady of Bellebron., drew her into a cause before judges by our authority concerning certain lands in the name of her sons, she caused an exception to be made in the presence of those judges: that, since the things concerning which proceedings were being conducted in judgment, and the aforesaid sons, remained in no way under her power and tutelage, since she had already passed to second vows, she was not bound to respond concerning these things in their name, whose tutor she had ceased to be. But because the said judges, neglecting this exception, nonetheless compelled her to this, she, perceiving herself aggrieved, appealed to our hearing. And therefore we command that, if it is so, after revoking as invalid whatever you find was attempted after an appeal of this kind, you shall hear the things proposed on this side and that, etc.

Chapter LXVIII

Latin source headnote: If a judge doubting concerning the law wishes to consult a superior, he ought to give the parties a copy of the consultation; otherwise faith is not given to his words of consultation.

The same, to the Master and Brothers of the House of Moriensis.

You intimated—(*And below:*) Moreover, the Hospitallers being ignorant and no copy of the process of inquiry having been made for them, they are known to have transmitted a reference to us, although according to lawful sanctions, whenever any judge promises that he will make a reference, he is bound immediately to give the litigants a copy of the consultation among the acts.

Chapter LXIX

Latin source headnote: If, before joinder of issue, a judge alters something concerning the principal business or anticipates without cause the day assigned, a lawful appeal is taken. And if a proctor appointed to impetrate concerning the appeal did not observe the form of the mandate, the appellant is heard even after a year.

The same, to the Archbishop, Archdeacon, and G., Canon of Tours.

You should know that we received, through the signification of the Bishop of Orléans, that, when the dean and Chapter of Meung convened him before judges by apostolic authority concerning the fact that, as they said, butchers ought not to sell meat anywhere other than in the stalls of the aforesaid dean and chapter, and at length the named dean and chapter, petitioning by imploring the office of the judges that, since the same bishop after citation caused meat to be sold in other stalls, they should recall to its former state what had been done by him concerning this, it was proposed on his behalf that, since issue especially had not been joined concerning the business, an imploration of this kind had no place. He added that, since by consent of the parties a certain day had been established before the said judges for litigating concerning the business itself, and the session of those judges

had been adjourned until that day, they ought not without the parties' consent to anticipate that day and hear the adverse party in such an imploration. And because they did not hear him concerning these things, he appealed to our hearing.

And although within a year he sent his proctor to prosecute an appeal of this kind, nevertheless, because the said proctor, circumvented, as is believed, contrary to the prohibition of the bishop himself impetrated our letters concerning this to certain judges suspect for a certain reason, the said bishop was unwilling to use the letters thus obtained, petitioning to be admitted to prosecution of the appeal notwithstanding the lapse of the year. And therefore we command that, if the prohibition of this kind and the foregoing causes of appeal, or one of them, are established, after revoking as invalid, etc., up to: what was attempted in the already-said business according to the contents of the former letters, etc.

Chapter LXX

Latin source headnote: A famous and very much allegeable chapter, and this it says: to justify an appeal interposed from a cause, it is necessary to prove the truth of the cause before the judge to whom the appeal is taken, unless it was offered and rejected before the judge from whom the appeal was taken. This it says uniquely up to § *To the Same*. § 1. If an appeal was not received by the judge or approved by the party, it suffices for the appellant to send a proctor for impetrating and contradicting, although the party appealed against is prepared to prosecute in the Curia. This it says up to § *Finally, He*. The Sicilian Abbot. § 2. Before prosecution of an appeal has begun, the appellant can, if he wishes, petition, even against the will of the appellee, that he be remitted to the judge from whom the appeal was taken; but he will be condemned in the expenses incurred by the adverse party in that appeal. This it says up to § *Indeed*. The Sicilian Abbot. § 3. The article of an appeal interposed from a grievance is discussed by the judge to whom the appeal is taken, when the party is absent through contumacy, even when issue has not been joined in the appeal or principal cause. This it says. The Sicilian Abbot.

The same.

When an appeal has been interposed from a probable cause, it does not suffice for the appellant to prove that he provoked from a cause of this kind unless he shows that it is true, unless, when offering to prove this, he was not admitted.

§ 1. It is also permitted to him, if his appeal is not received by the judge nor approved by the adversary, to impetrate letters concerning prosecution of the appeal through a proctor constituted for impetrating and contradicting, although the other party, through himself or a suitable proctor, is prepared to receive judgment concerning this at the Apostolic See.

§ 2. Finally, one who sent forth the voice of appeal, cognizance of which has not yet been delegated to another at his petition, is by law remitted to the person from whom he provoked, notwithstanding the contradiction of the other party; nevertheless he is to be condemned to the adversary in the lawful expenses that it is established the adversary incurred on this account.

§ 3. Indeed, when someone is prepared to prove the grievance on account of which he determined that an appeal was to be made, and the adverse party contumaciously absents himself, proceedings can be taken concerning this without joinder of issue, although joinder of issue has not yet been

made in the article of appeal itself or the principal business, because, since in this case the injustice of the first judge is principally accused, the rigor of law from which perplexity of the cause could follow is not to be required.

Chapter LXXI

Latin source headnote: The clause "with appeal removed," placed in the middle of letters, looks to the foregoing matters to which it is annexed, not the following, unless it is repeated at the end of the letters. And this applies if the businesses are separate.

The same.

We respond to your inquiry in this way: whenever a clause through which the remedy of appeal is removed is placed in the middle of letters, if there are several businesses in no way touching one another, it embraces only the foregoing, unless perhaps the aforesaid clause is repeated at the end of the letters.

Chapter LXXII

Latin source headnote: It is brief, but in other words it is summarized thus: the appeal of one profits another if they are helped by a common right, the business is the same, the cause of defense is the same, and they were condemned by the same sentence; otherwise it is different.

The same.

When several persons have been condemned by one sentence, if one alone flies to the benefit of appeal, his victory by common law supports the others, if they are helped by a common right and the business is the same and the cause of defense is the same.

Chapter LXXIII

Latin source headnote: Just fear excuses to such a degree that one who does not appeal is held as an appellant if he has protested and determined that the causes of appeal were to be expressed.

The same.

If just fear excuses you from appealing, you are reputed to have flown to the benefit of appeal, provided that, within the time in which a provocation is lawfully made, after a protestation concerning this has been proposed before the judge from whom you had wished to appeal—or, if you were unable to have access to him, in the presence of good men—you determined that the causes of appeal were to be expressed.

Title XXIX: On Clerics Journeying

Sole Chapter

Latin source headnote: Nothing is to be altered against one making pilgrimage or setting out for the Apostolic See.

Celestine III, to the Bishop of Amiens.

From the complaint of I., a priest, we understood *that, after he entered upon the journey of coming to us, certain persons presumed to plunder his things.* Although *however* the same priest did not place his things and those of his church under our protection when he approached us, nevertheless, *because he ought not on that account to have been despoiled of his things,* since those who approach our presence ought to be secure under apostolic protection together with their things, we command *your fraternity* that you cause whatever was taken away or removed from that priest after he entered upon the journey of coming to us to be restored to him *without delay, with every appeal removed.*

Title XXX: On Useful or Useless Confirmation

Chapter I

Latin source headnote: An inferior judge cannot take cognizance of a matter knowingly confirmed by the Pope unless the confirmation did not hold, as because it was surreptitious or concerned a litigious matter. This it says together with the following chapter.

Alexander III, to the Bishop of Exeter.

If anyone has impetrated from the Apostolic See confirmation of a litigious matter, the judge can no less take cognizance of the cause and terminate it with its due end. But if he peacefully possessed the thing at the time when he obtained confirmation concerning it, it is not *safe or* lawful for a judge to decide or define a question that afterward arose without a mandate of the Apostolic See.

Chapter II

Latin source headnote: It says the same thing.

The same, to the Bishop of Worcester.

But concerning confirmations of the Roman Pontiffs, we will you to hold that judgment is in no way to be made contrary to them unless a new mandate of the Apostolic See proceeds or it is certain that *the confirmations themselves* were elicited through suggestion of falsehood.

Chapter III

Latin source headnote: Letters of confirmation concerning a sentence from which an appeal had been taken are not valid if the appellee maliciously anticipated the appellant; otherwise they remain pending until cognizance is taken of the appeal.

Celestine III.

A. of good memory, *formerly* your canon, *who closed his last day at the Apostolic See, took care to consult us concerning certain things that we have determined necessarily to intimate to you according to the tenor of our response.* He *however* proposed that a sentence *through false instruments* had been pronounced by delegated judges, *which indeed were believed to be genuine,* and within ten days the person against whom sentence had been given, *noticing the falsity of the instruments,* appealed from that sentence; nevertheless, the judges no less commanded that the sentence be put into execution. But the appellant, immediately entering upon the journey to the Apostolic See, impetrated letters concerning retracting the sentence; his adversary, however, cunningly anticipating him, had obtained a rescript confirming the promulgated sentence, in which *nevertheless* no mention was made of the appeal that

had been made. And therefore you asked which letters should generate prejudice against which. We respond, therefore, that the later ought to generate prejudice against the former.

Indeed, from this first consultation there arose a second question exhibited in our auditorium, which stands thus: if in the same letters—namely, the later—this clause were placed, "notwithstanding any letters of confirmation of the rendered sentence, let the cause be heard and terminated with its due end," whether the former letters ought thus to be revoked. To this we say that through the last the first would be utterly revoked. But if it were said, *as is more frequently accustomed to be placed in apostolic letters,* "no letters prejudicing truth and justice," or under another form of words, provided that nothing were said expressly concerning the letters of confirmation, we say that the first ought to have their force until fuller cognizance is had of the iniquitous *or false* sentence. Third, etc. (*Cf. c. 5, On Proofs, II. 19.*)

Chapter IV

Latin source headnote: Renewal of a privilege does not grant a new right, nor does it confirm an old one; but it preserves whatever right belonged. More briefly it can be summarized thus: renewal of a privilege does not induce confirmation of the right contained in it.

Innocent III, to the Dean of Paderborn.

When the beloved daughter in Christ the abbess and sisters of the Church of Gardeven. wished their privileges to be renewed because of the dangers of the roads, we determined that it should be enjoined upon four bishops and as many abbots that they should inspect them diligently and, faithfully transcribing their tenor, remit them to us under their seals, *and they, obeying the apostolic mandate, subtly inspected the privileges of Agapitus and John of happy memory, our predecessors, presented to them, and faithfully transmitted their tenor to us under their seals. Our venerable brother G., Archbishop of Reims, also, then Bishop of Palestrina, discharging the office of legation in those regions, caused the tenor of those privileges to be presented to our sight under his own seal.* But we, giving due faith both to the legate, who caused them to be presented to our sight under his own seal, and to the investigators themselves, although we did not see why the same privileges ought not to be renewed, nevertheless, because C., canon of the greater church, and I., canon of Holy Cross, [*of Hildesheim, established in our presence,*] proposed that the Church of Hildesheim had been in possession of the subjection of that monastery for one hundred years and more, we determined that the privileges themselves were not then to be renewed.

Hence we commanded judges that, approaching *together* a suitable place and citing those who were to be summoned, they should inquire more diligently into the truth concerning these things, *and, proceeding up to definitive sentence, should faithfully send to the Apostolic See all the acts written under testimony of their letters, fixing for the parties a competent term at which they should present themselves to our sight to receive sentence. But they, wishing to execute the apostolic mandate, cited the parties to their presence,* from whom the party of the Church of Hildesheim appealed to the Apostolic See, *on account of which those judges were unable to proceed in the cause.* But recently, *when the parties were established in our presence,* the aforesaid abbess again petitioned that we ought to renew the privileges of her church, *especially since in the presence of the delegated judges the party of the Church of Hildesheim took no care to show or prove anything that derogated in any respect from the monastery or its privileges.* But in opposition it was *solicitously* petitioned that we deign to commit the cause itself to discreet men who should receive the witnesses whom that party proposed to introduce against the privileges of the monastery and to prove lawful prescription.

We therefore, *more diligently* considering that it was established by civil law *with provident deliberation* that, when danger concerning witnesses is feared, lest the truth be concealed and opportunity for proving be removed by fortuitous events, even without joinder of issue infirm witnesses and others concerning whom fear exists from some reasonable cause shall be admitted to testimony, being moved by the likeness of the same equity, determined that the aforesaid privileges should be renewed as though already consumed by excessive age, since they had been written not on parchment but on papyrus. We will that no new right be acquired by the monastery from a renewal of this kind, but *that* its ancient *right,* if it has any, be preserved through renewal of the privilege.

But because the aforesaid monastery is shown through a privilege of our predecessor to belong to the right and property of the Apostolic See, lest the right of the Roman Church remain undefended, we determined that the same abbess should be constituted its proctor, so that, since prescription does not run against the possessions and rights of the Roman Church unless it is of one hundred years, she shall in our place procure concerning this and other things those things that are to be procured before you in judgment. Therefore, unwilling that the status of the same monastery be doubted longer, *through which the cause itself would remain further undecided, through apostolic writings* we command your discretion that, choosing a safe and suitable place, *within the space of six months after receipt of the present letters,* you shall receive the witnesses whom the Church of Hildesheim should determine to produce to prove prescription, or the Convent of *Gandersheim* to show interruption. And if the former proves lawful prescription, as it intends, unless interruption has been proved in opposition, you shall adjudge the subjection of the monastery itself to the aforementioned bishop, annulling the privilege that we caused to be renewed for *that* monastery; otherwise, imposing perpetual silence upon him concerning this, you shall pronounce that *the* monastery enjoys perpetual liberty, after our privilege has been returned to it. [*But the witnesses, etc. Given at Ferentino, on the fifteenth day before the Kalends of July, in the ninth year, 1206.*]

Chapter V

Latin source headnote: A confirmation that a religious impetrated from the Pope concerning a temporal administration or priory is not valid if he concealed that he was a regular. But if he expressed it, the rescript is presumed false, because the Pope is not accustomed to grant it. This it says together with the following chapter.

The same, to the Bishop and Provost of Utica.

It reached our hearing through the signification of *the beloved son* the provost of the Church of Neman. that certain canons of the Church of Neman., *defamed concerning dilapidation or other crimes,* labor to obtain from us letters of confirmation concerning their administrations, the condition of their religion *and profession* having been suppressed. Since, therefore, the Apostolic See is not accustomed personally to confirm anything to regular persons, *through apostolic writings* we command your discretion that you, *supported by our authority,* declare invalid and empty the confirmations that you know were thus impetrated by those canons, since they are regulars. [*But if not both, etc. Given at the Lateran, on the seventeenth day before the Kalends of July, 1209.*]

Chapter VI

Latin source headnote: It says the same thing as the immediately preceding chapter above.

The same.

The petition extended to us on your behalf contained that several of the religious who preside over priories or other administrations assert that they have impetrated from us letters of confirmation concerning possession of those *priories* for as long as they live, *on occasion of which they alienate and consume the goods of their priories, asserting that they are subject to you in no respect as regards those priories.* Since, therefore, we do not believe that letters of this kind emanated from our chancery, *through apostolic writings* we command your discretion that you punish as authors of falsity those who exhibit such letters in which priories or administrations are confirmed to them as religious; but if no mention of their religious status is made in them, you shall declare that they are not valid as having been surreptitiously obtained through concealment of the truth. [*Given at Rome, at Saint Peter's, on the fifth day before the Ides of February, 1205.*]

Chapter VII

Latin source headnote: A sentence or award rendered by arbiters contrary to the form of law or of the compromise does not hold, although it was confirmed by the Pope in common form.

The same, to the noble man Matthew de Rivariis.

After examining the cause being conducted between you and the knights of Campania concerning the Church of Saint Angelo *of Casaperota, after hearing the confessions and understanding the attestations, and also inspecting the instruments and investigating the allegations,* we perceived *evidently* that the arbitral award that the Vicedominus of Sabina was said to have promulgated concerning the same business had been dictated contrary to the form of law and of the compromise. Hence, notwithstanding the confirmation of Pope C. *of happy memory,* our predecessor, who had confirmed it as it had been providently rendered and received by both parties, we declare it invalid and empty. *But the action, etc.* (*Cf. c. 15, On Judgments, II. 1.*) [*Given at the Lateran, on the ninth day before the Kalends of April, in the tenth year, 1207.*]

Chapter VIII

Latin source headnote: In a confirmation from certain knowledge, the word "as" is placed causatively; nor does it harm if the word of confirmation precedes the tenor of what was confirmed.

Honorius III, to the illustrious King, the Barons and Knights, and the other men of Cyprus.

Our venerable brother the Archbishop of Nicosia and his suffragans showed us by their transmitted petition that an amicable settlement intervened, through the mediation of *our venerable brother* the Bishop of Albano, then legate of the Apostolic See, between them *on one side* and you *on the other* concerning certain tithes, *possessions, and other things,* with *this* expressly added: that as soon as it should happen to be confirmed by apostolic authority, it ought immediately to be put into execution. But although *the settlement itself* was confirmed *by us,* and, for greater evidence of the matter, the tenor of the settlement was inserted in the letters of confirmation, you nevertheless refused to observe *the settlement* itself, advancing a frivolous occasion both from the fact that in *our* letters the word of confirmation precedes the tenor of the settlement according to the style of the Roman Church, and because *that* customary clause—namely, "as it was providently made without depravity"—is contained in the same letters. *Since, therefore, you ought to insist upon no cavilling refuges of this kind, not*

merely against God and churches, but not even against private persons, we command that, if truth supports the foregoing, you shall take care to fulfill the same settlement, *observing* it.

Chapter IX

Latin source headnote: A collation of a church made to another by a legate and confirmed by the Pope does not injure the right of the diocesan.

The same, to all Abbots and Prelates and Convents and Clerics established in the Diocese of Constantinople.

Our venerable brother the Patriarch of Constantinople showed us by his complaint that, when certain of you, taking occasion from the fact that *our beloved son* I., cardinal priest *of the title of Santa Prassede,* then legate of the Apostolic See, conferred their monasteries in spiritual and temporal things upon certain other churches and clerics, they refuse to obey the patriarch himself and to answer to him concerning patriarchal rights, introducing in aid of their presumption confirmations of such collations impetrated from the Apostolic See. Since, therefore, we will that the rights that are owed to diocesans not be diminished or *in any way* injured through the aforesaid collations or confirmations, we command *your whole body* that, notwithstanding an occasion of this kind, you take care humbly to exhibit *due* reverence and obedience to the patriarch himself and to answer to him fully concerning his just rights, *also in spiritual things, unless perhaps some persons show themselves to be fortified by an express privilege of exemption; otherwise, we will that the sentence that the same patriarch shall reasonably render against rebels on this account be firmly observed until worthy satisfaction.*

END OF BOOK TWO.

Book III

Compilation of the Decretals of Lord Pope Gregory IX

Book Three

Title I: On the Life and Honorable Conduct of Clerics

Chapter I

Latin source headnote: When celebration is taking place, the clergy ought to be separated from the people.

From the Council of Mainz.

Let laypersons not presume to stand or sit among the clerics beside the altar when the sacred mysteries are celebrated, *whether at vigils or at Masses altogether*; but let that part which is divided from the altar by the screens be open only to the clerics singing psalms. But for praying and communicating, let the holy of holies be open to laymen and women, as is the custom.

Chapter II

From the Council of Poitiers.

Let clerics bearing arms and usurers be excommunicated.

Chapter III

Latin source headnote: A priest having a people ought to have a cleric who sings with him and assists him in the other things expressed here.

From the Council of Mâcon.

Let every priest who rules a people have a cleric who sings with him, reads the epistle and lesson, and is able to maintain schools and admonish his parishioners to send their sons to the church to learn the faith, whom he himself shall instruct with all chastity.

Chapter IV

Gregory IX.

If any one of the clerics lets his hair grow long, let him be anathema.

Chapter V

From the Council of Carthage.

Let a cleric grow neither his hair nor his beard.

Chapter VI

Latin source headnote: A cleric who has not made profession and is not in sacred orders can take a wife; but he shall be tonsured again if he wishes to enjoy clerical privilege or, by dispensation, to

retain a benefice. This it says according to the manner that is more consonant with the letter, according to which it posits only one case.

From the Council of Tribur.

If a cleric who is without a grade and was not delivered to a monastery by his parents takes a wife after relinquishing the tonsure, let him be permitted to have the wife and be tonsured again, and let him not dare to dismiss his wife during her life.

Chapter VII

Latin source headnote: A cleric ought to bear the tonsure; and if he is unwilling, he can be tonsured against his will by his superior.

Alexander III, to the Archbishop of Canterbury.

To clerics—(*And below:* [*Cf. c. 5, Lest Clerics or Monks, III. 50.*]) Clerics who grow their hair and beard shall be tonsured by their archdeacons even against their will. *With garments, etc.* (*Cf. c. 5, Lest Clerics or Monks, III. 50.*)

Chapter VIII

Latin source headnote: One who frequents monasteries of nuns and, after being admonished, does not desist, is deposed if he is a cleric; if a layman, he is excommunicated.

The same, in the Lateran Council.

If, *moreover,* any cleric presumes to frequent monasteries of nuns without a manifest and reasonable cause, let him be restrained by the bishop; and if he does not desist, let him be rendered exempt from ecclesiastical office. If laymen do so, let them be subjected to excommunication and made altogether alien from the assembly of the faithful.

Chapter IX

Latin source headnote: A bishop can establish in a church a certain number of clerics according to its means who live in common, and compel contradictors to this; and he can absolve those living in common from excommunication incurred on account of laying hands upon a companion.

Gregory VII.

Because, as Scripture says, *the senses of man are inclined to evil from his youth, just as through sensuality the flesh inclines toward fault, so, with vigor of spirit preceding and divine grace following, the mind ought to strive toward pardon and always to seek remedies by which it may avoid rushing occasions of death. Hence indeed it is that, understanding that many things have occurred in your churches from one's own defect and many from another's malice, which either have offense in themselves or occasion for offending, we decree, through the authority of the Apostolic See, which by the Lord's disposition we serve, as it is given by him, that opposition is to be made, and that the authority of the episcopal office in you is to be fortified by apostolic writings for cutting away harmful things among your subjects and inserting useful ones,* [*we have determined,*] *recollecting that in the old law the Lord commanded, saying: "The fire shall always burn upon the altar, which the priest shall nourish, placing wood beneath it morning by morning each day."*

We establish, *therefore,* that, after the means *and* revenues and *also* expenses of *your* churches have been diligently inspected, you may establish in them a certain number of clerics and decree that their goods shall come into common, *and* that they shall eat in one house and sleep and rest under one roof. But if there are any contradictors, let it be lawful for you to compel them to this observance, notwithstanding appeal, through suspension from office and benefice, or even by a graver penalty if there is need. We also grant that, if anyone among those who live together has merited to be made alien from communion for laying a hand upon a companion, you shall have full power to reconcile *him* and impose penance, unless perhaps the atrocity of the act awaits a graver penalty. *We will that this also be observed concerning women and those who, on account of old age or infirmity, cannot approach our presence, bringing no prejudice to an ecclesiastical constitution or our successors whereby they may have power to order concerning these things what they shall see more rightly.*

Chapter X

Latin source headnote: Ecclesiastical and delegated judges ought to judge without payment, nor can they exact a tenth or another quota of the suit, even if custom has this.

Innocent III.

Since the Apostle commands abstinence from every appearance of evil, *we who, although unworthy, have been established by God over peoples and kingdoms so that, according to the prophetic word, we may root out and destroy, build and plant, ought to strive with the greatest effort that we root out vices and plant virtues, destroy iniquitous things and build honorable ones, and thus, by the mediation of our solicitude, crooked things may pass into straight and rough things be converted into level. Although the labor of this solicitude of ours ought generally to extend to all, because we are debtors to the wise and the unwise, nevertheless it ought specially to extend to clerics, who ought to sleep away from vices so that they may be the silvered wings of the dove, lest anything appear in them that obscures the brightness of ecclesiastical purity.*

Indeed, it has reached the hearing of our apostolate *through the assertion of many* that, when you receive causes to be treated by our delegation, in the manner of secular persons you make agreements with the litigants for your salary—pledges having been received—concerning a tenth of the suit or another part, according to the diverse custom of the lands, apart from expenses for provisions, *which afterward you contend to retain until payment of the money, even when the parties are unwilling.* We, considering that ecclesiastical revenues are allotted to you and other clerics for this purpose, that from them you ought to live honorably—(*And below:*) therefore, we *command and enjoin* that, abstaining henceforth from exactions of this kind, you take care to impart judicial vigor to litigants without payment, notwithstanding what is proposed by some in fraud: that it is exacted in the name of assessors, since it is lawful neither for a judge to sell a just judgment nor for venal sentences to be approved even by the secular laws themselves. [*Given at Todi, on the fifth day before the Nones of October, 1198.*]

Chapter XI

Latin source headnote: To avoid scandal, religious of diverse habits, sent to preach to the newly converted, can conform themselves to one superior habit and purpose.

The same, to the Bishop of Livonia and to the Brothers who are with him.

God, who always makes his Church fruitful with new offspring, *wishing to conform modern times to the former and to propagate the Catholic faith, inspired your predecessors, and you after them, with the pious affection*

that, entering the Province of Livonia, you should evangelize to the pagans the name of our Lord Jesus Christ, following the example of those to whom we read in the Gospel that it was said: "Going, teach all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit"; and concerning whom the evangelical word adds: "But they, setting forth, preached everywhere, the Lord cooperating and confirming the word by the signs that followed." For that evangelical householder, considering that the harvest is great but the laborers few, still sends laborers into his harvest and in this, as though the eleventh hour, appoints new vine-dressers to his vineyard, whose labor he may recompense with an equal denarius with the first. Hence, since you have assumed the office of evangelizing by the inspiration of him who makes both one, you must walk in the spirit of unity and charity, following the example of those concerning whom it is read: "The multitude of believers, however, had one heart and one soul."

Therefore, lest, if observance among you is disparate and habit dissimilar, scandal arise among those to whom you preach one Gospel, *and that new people be divided into parties before it is gathered into one Church, since the hostile man is still prepared to sow tares over the Lord's harvest, we admonish and exhort your discretion in the Lord, through apostolic writings* we command that, notwithstanding that among you there are monks and regular canons, or others also professing the regular life under another strictness, you all equally conform yourselves to one regular purpose and honorable habit, insofar as it concerns this office, *lest the new plantation of the Church of Livonia, reddened with the blood of your predecessor of pious memory, brother bishop, suffer even a slight scandal among you, through whom it is to be rooted in and fostered in the Catholic faith.* [*But because* (*Cf. c. 9, On the Separation of Spouses, IV. 19.*) *Given at the Lateran, on the thirteenth day before the Kalends of May, 1201.*]

Chapter XII

Latin source headnote: Theatrical games ought not to be performed in churches or by clerics, even under pretext of custom.

Innocent III.

Since the beauty of the house of God—(*And below:* [*Cf. c. 15, On the Sons of Priests, I. 15.*]) Sometimes theatrical games are performed in the *same* churches, and not only are monstrosities of masks introduced in them for spectacles of mockery, but also on certain feasts *of the year that immediately follow the Nativity of Christ,* deacons, priests, and subdeacons *in turn* presume to exercise the mockeries of their madness, *and through the obscene revelries of their gesticulations in the sight of the people cause clerical honor to become vile, although at that time they ought rather to soothe the people through preaching the word of God. Therefore, because through the office enjoined upon us zeal for the house of God consumes us, and the reproaches of those reproaching him are recognized to fall upon us, through apostolic writings* we command your fraternity that, lest the honorable conduct of the Church be polluted through turpitude of this kind, *those persons, etc.* (*Cf. c. 8, On Married Clerics, III. 3.*), and that you take care *thus* to root out from your churches the aforesaid custom—or rather corruption—of mockeries, *so that you prove yourselves zealous for divine worship and sacred order.* [*Given at Rome, at Saint Peter's, on the sixth day before the Ides of January, in the ninth year, 1207.*]

Chapter XIII

Latin source headnote: Clerics ought to be continent and live chastely; he punishes those acting contrary, and those who can use lawful marriage are punished more severely.

The same, in the general council.

That the morals and acts of clerics may be reformed for the better, let all take care to live continently and chastely, especially those established in sacred orders, guarding against every vice of lust, especially *that* on account of which the wrath of God comes [*from heaven*] upon the children of distrust, so that in the sight of almighty God they may be able to minister with a pure heart and clean body. But lest facility of pardon furnish an incentive for offending, we establish that those who are caught laboring under the vice of incontinence shall be punished according to the canonical sanctions, in accordance with whether they have sinned more or less. We command that these be observed more efficaciously and strictly, so that temporal punishment may at least restrain from sin those whom divine fear does not recall from evil. Therefore, if anyone suspended for this cause presumes to celebrate divine services, not only shall he be despoiled of ecclesiastical benefices, but for *this* double fault he shall also be perpetually deposed. But prelates who presume to sustain such persons in their iniquities, especially under pretext of money or another temporal advantage, shall be subject to equal vengeance. But those who, according to the custom of their region, have not renounced conjugal union shall be punished more gravely if they lapse, since they can use lawful marriage.

Chapter XIV

Latin source headnote: A cleric given to gluttony or drunkenness who does not desist after being admonished is suspended from office or benefice.

The same, in the same council.

Let all clerics diligently abstain from gluttony and drunkenness; hence let them temper wine to themselves and themselves to wine. Nor let anyone be incited to drinking, since drunkenness both induces exile of the mind and provokes an incentive of lust. Hence we decree that abuse to be utterly abolished by which, in certain regions, drinkers bind themselves in their manner to equal draughts, and in the judgment of such persons he is praised more who intoxicates more persons and drains fuller cups. But if anyone shows himself culpable concerning these things, unless, after being admonished by his superior, he makes [*suitable*] satisfaction, let him be suspended from office or benefice.

Chapter XV

Latin source headnote: He commands clerics to abstain from dishonorable occupations, persons, places, games, garments, and less than honorable adornment, and to use honorable habit, whose vanity he expresses and detests in many particulars.

The same, in the same council.

Let clerics not exercise secular offices or commerce, especially dishonorable ones. Let them not attend to mimes, jesters, and actors. And let them altogether avoid taverns, unless perhaps, established upon a journey, for cause of necessity. Let them not play at dice and knucklebones, nor be present at games of this kind. Let them have a suitable crown and tonsure. And let them exercise themselves diligently in ecclesiastical offices and other good studies. Let them wear closed outer garments, not notable for excessive shortness or length. Let them not use red or green cloths, nor stitched or pointed sleeves or shoes, bridles, saddles, breastplates, and gilded spurs, or things bearing

another superfluity. Let them not wear sleeved copes for divine office within a church, nor elsewhere either if they are established in the priesthood and in parsonships, unless a just cause of fear requires their habit to be transformed. Let them bear no brooches at all, nor belts having ornament of gold or silver, nor rings either, except those to whom it belongs by office of dignity. But let all pontiffs in public and in church use linen outer garments, unless they are monks, who must bear monastic habit. Let them not use unclasped cloaks in public, but ones joined on each side either behind the neck or before the breast.

Chapter XVI

Latin source headnote: A cleric who, after being admonished a third time, does not abstain from secular commerce in the meantime loses clerical privilege as regards his goods. This it says. And it is a very noteworthy text that is alleged daily.

Honorius III, to the Bishop of Amiens.

From the letters of *the noble man,* the Count of Ponthieu *and Montreuil,* we understood that certain clerics *in name alone* of his land, *declared taverners, who, not content with benefices but* devoting themselves rather to *illicit* secular commerce *and domestic cares* than to divine offices *and services,* and wishing to enjoy clerical privilege, are unwilling to be subject to the statutes of the country, by which, whenever it is expedient, they defend themselves like laypersons, *and* to be subject in the profits of their commerce. *Hence, because great scandal is generated from this among the laity, he humbly supplicated us that we should either command clerics of this kind to be compelled to serve* [*in*] *churches, illicit secular commerce being set aside, or permit them, as regards their means, to be subject to the statutes and customs of the province. Since, therefore, these things are recognized to redound to the reproach of clerical order, and the life of clerics ought not to generate scandal for laypersons but to furnish an example of honorable conduct,* [*through apostolic writings*] we command your fraternity that, if *it is so, since you are the diocesan of the place,* if *such clerics,* after being admonished by you a third time, do not come to their senses from things of this kind but, divine offices having been set aside, persist in the aforesaid commerce, since by an act *of this kind* they cast away clerical privilege, you shall not defend them from being subject, while they implicate themselves in these things, to the statutes and customs of the country as regards their means. [*Given at Rome, on the fourth day before the Ides of May, in the second year, 1218.*]

Title II: On the Cohabitation of Clerics and Women

Chapter I

Latin source headnote: A cleric ought not to retain in his house a woman suspected of incontinence, even if she is his mother or another blood relative.

From the Council of Mainz.

It is to be forbidden *and threatened in every way* that no priest retain *in his house* women *as* [*also*] *is contained as inserted in the canon,* concerning whom suspicion can exist. But neither should he retain those whom the canons permit, [*namely*] a mother, paternal aunt, and sister, because, at the devil's instigation, crime is found to have been *frequently* perpetrated even with them, or also with their maidservants. But if any one of these has a necessity *suffering such a condition,* priests are to have for them a house in a village or country estate far from their own dwelling, and there supply to them the

things that are necessary. *But according to the authority of the canons, in every way* it is also to be forbidden that any woman presume to approach the altar, or minister to a priest, or stand or sit within the chancel.

Chapter II

Latin source headnote: A cleric in sacred orders who, after being admonished, does not desist from conversation with suspect women or from their company is excommunicated.

From a decree of Pope Eugenius.

If any one of the priests, that is, a presbyter, deacon, or subdeacon, suspected of the crime of fornication with any woman whatsoever, is found after the first, second, and third admonition to converse and in any way associate with her, let him be subjected to excommunication; but let the woman be judged canonically.

Chapter III

Latin source headnote: A prelate ought not to compel a cleric to abjure a concubine; but he can excommunicate one unwilling to dismiss her.

Alexander III, to the Archbishop of Salerno.

Moreover, we do not wish your fraternity to compel clerics constituted in sacred orders who publicly keep concubines *in their own houses* to abjure them, lest, returning to the same fornication by the instigation of diabolical fraud, they incur the guilt of perjury. But you ought to compel them more strictly by a sentence of suspension and interdict to remove those women from themselves in such a way that sinister suspicion cannot be had concerning them. And if any of them should perhaps presume to return to them or take others, you ought to pronounce against some of them a perpetual sentence of excommunication, so that others, terrified by their example, may be restrained from similar acts.

Chapter IV

Latin source headnote: If clerics, after being admonished, do not dismiss their concubines, they are suspended from benefices, and, if they do not correct themselves, they are deposed.

The same, to the Archbishop of Canterbury and his Suffragans.

Just as it becomes us to strive with the utmost effort to extirpate *vices that give rise to danger of souls, so also it befits us to propagate the seeds of virtues, from which an increase of salvation may come to* [*God's*] *faithful and the adornment of honorable conduct to sacred churches. Hence, since in England it has been established by a depraved and detestable custom and for a long time that clerics have fornicating women in their houses, we, wishing to remove so grave a scandal from the people and to bring the aforesaid clerics back to ecclesiastical honorable conduct,* command your fraternity *by apostolic writings, by way of precept,* that you take care diligently to admonish the clerics of your jurisdiction who, in the subdiaconate and above, have had fornicating women *in their houses,* that they remove them from themselves *cessation of delay and appeal,* in no way to admit them further. But if *within forty days after your communication they should perhaps* disdain to acquiesce in these matters, relying upon apostolic authority and with the remedy of appeal removed, suspend them from ecclesiastical benefices until fitting satisfaction; and, if while suspended they

presume to retain them, take care to remove them perpetually from the same benefices. [*But if any, etc.* (*Cf. c. 1, On Married Clerics, III. 3.*)]

Chapter V

Latin source headnote: Letters concerning absolution, obtained by a suspended concubinary cleric with the sequence of facts suppressed, are not valid.

The same, to the Archbishop of York.

But concerning what you assert, that A., a presbyter retaining a fornicating woman, was suspended from his office because of this, *we answer your prudence thus: that, if an appeal has been made concerning this to our presence, if it should happen that he comes to us, as we shall see to be expedient, we shall correct his pertinacity and audacity. But if he does not come to our presence, we wish the sentence of suspension pronounced against him because of this to be observed for so long until he casts his fornicating woman wholly away from himself and lives continently, as befits a presbyter.* Moreover, if he obtains from us letters that do not contain the sequence of the fact, we do not wish *those letters* to profit him.

Chapter VI

Latin source headnote: If clerics, after being admonished, do not dismiss their concubines, they are suspended from benefices, and, if they do not correct themselves, they are deposed.

The same, to the Archbishop of London.

But if clerics of your jurisdiction, whether constituted in sacred orders or in lower ones, retain fornicating women, unless at the second or third admonition they dismiss them from themselves, to hold them in contempt thereafter, let it be lawful for you, appeal being set aside, to despoil them of churches or portions of them, *if they have any,* their office nevertheless being interdicted to them.

Chapter VII

Latin source headnote: Divine offices are lawfully heard and ecclesiastical sacraments received from a fornicating cleric so long as he is tolerated and there is no manifest evidence of the deed; but one must abstain from a notorious one, not because there is a defect in the sacrament, but for the correction of the fornicators themselves. This it says, adhering to the words of the letter.

Lucius III.

Your devotion has thought fit to inquire *whether, when you go to parish churches,* [*it is useful to hear the masses of those*] *who are believed to have concubines. For concerning this,* [*indeed,*] *diverse opinions of the sacred canons seem to have issued.* For in one place it is said: "Let no one hear the mass of a priest whom he knows indubitably to have a concubine"; but elsewhere it is read: "No one, however polluted he may have been, can pollute the divine sacraments, which exist as purgatives of all contagions. For of whatever sort a priest may be, the things that are holy cannot be defiled. Therefore receive *fearlessly* the mysteries of Christ from every priest, because all things are purified in the faith of Christ." Yet one thing is a notorious crime, another a hidden one. Notorious is defined as that concerning which a presbyter is canonically condemned. *Another is* hidden, which is *still* tolerated by the Church. Yet one thing is when a presbyter does not deny a notorious crime or has been canonically condemned concerning it; another is almost hidden, which is tolerated by the Church. Likewise, one thing is to

abstain from the offices of such men, so that license to sin may be taken away from others and men of this kind may be drawn to the fruit of penance; and another, if the mysteries of such men are rejected as though they lay in fornication. Therefore hold without doubt that from clerics and presbyters, although fornicators, so long as they are tolerated *by the Church* and do not have manifest evidence of the deed, the divine mysteries may lawfully be heard and the other ecclesiastical sacraments received.

Chapter VIII

Latin source headnote: If the fornication of a cleric is so public that it passes into notoriety, neither accuser nor witness is necessary. But if it is public through report alone, testimonies alone—that is, statements of witnesses not under oath—do not suffice for condemnation. But if scandal should arise from this, purgation is imposed, and one failing in it is canonically punished.

Innocent III, to the Bishop of Exeter.

Your fraternity has thought fit to consult us whether, concerning clerics publicly having concubines who, when they are called before you, deny that they are concubinaries, and no lawful accuser appears against them, belief is to be given to the testimony of good men among whom they are known to live. We therefore answer your consultation thus: that, if their crime is so public that it ought deservedly to be called notorious, in that case neither witness nor accuser is necessary, since a crime of this kind cannot be concealed by any evasion. But if it is public not from manifest evidence but from report, in that case testimonies alone do not suffice for their condemnation, since judgment is to be made not by testimonies but by witnesses. But if such suspicion is had concerning those clerics that scandal is generated from it among the people, although no accuser has appeared against them, canonical purgation is nevertheless to be imposed upon them. If they are unwilling to perform it or fail in performing it, you ought to punish them by canonical chastisement. [*Given at the Lateran, on the fifth day before the Ides of May, 1199.*]

Chapter IX

Latin source headnote: It is brief, whence it is not summarized.

The same, to the Bishop of Pistoia.

Your fraternity has asked of us—(*And below:* [*Cf. c. 24, On Tithes, III. 30.*]) You are also not to permit little women to dwell with clerics, unless perhaps they are among those persons in whom the bond of nature permits no suspicion of savage crime. [*Given at the Lateran, on the fourth day before the Nones of December, 1199.*]

Chapter X

Latin source headnote: A concubinary cleric is not to be avoided in offices unless he is notorious.

Gregory IX.

It has been asked concerning clerics fallen into fornication whether their office is to be heard before they have repented. But although it is established that anyone is suspended as regards himself for mortal sin, he ought nevertheless not to be avoided in offices, because, as regards others, even in the case proposed he is not suspended, unless a sin of this kind is notorious through a sentence or

through a confession made in court, or through manifest evidence of the matter, which cannot be concealed by any evasion.

Title III: On Married Clerics

Chapter I

Latin source headnote: A marriage contracted by a cleric existing in sacred orders does not hold; it is otherwise in minor orders, but then he is compelled to relinquish his benefice.

Alexander III.

But if any of those clerics *themselves* below the subdiaconate have taken wives, you shall compel them by ecclesiastical severity to relinquish ecclesiastical benefices, *if they have any,* and to retain *their* wives. But if they are known perhaps to have taken wives in the subdiaconate and other higher orders, take care to compel them by a sentence of suspension and excommunication, *appeal being set aside,* to dismiss the wives and do penance for the offense, *by our authority.*

Chapter II

Latin source headnote: A married man is not promoted to an ecclesiastical administration, order, or benefice unless he promises chastity and is not a bigamist.

The same, to the Bishop of Hereford.

Indeed, *concerning clerics of the lower orders who, constituted in marriage, have for a long time held ecclesiastical benefices by grant of your predecessors, of which they cannot be deprived without great danger and shedding of blood, we have thought that this answer should be given to your fraternity: that, because a nation and a barbarous people and a multitude are involved there, you should tolerate under dissimulation their possession of the ecclesiastical benefices held for so long.* Take more attentive care that henceforth a married cleric not be admitted to ecclesiastical benefices, sacred orders, or ecclesiastical administrations, unless perhaps he should vow perpetual chastity and had had one wife, and a virgin.

Chapter III

Latin source headnote: If a beneficed cleric in minor orders contracts marriage, he is deprived of the benefice, and what he gave to the church is restored to him. This it says, and in this last point there is a noteworthy and highly citable case.

The same, to the Bishop of Veroli.

What by you—(*And below:*) *For the future, because the diligence of your fraternity seeks to know* whether clerics constituted below the order of subdeacon, who, overcome by the vice of the flesh and unable to contain themselves, take wives, ought canonically to be despoiled of ecclesiastical benefice: we wish you to hold *with undoubted truth* that, since they cannot at the same time devote themselves to pleasures and carnal desires and to divine and ecclesiastical services, they are, because of their uncleanness, unworthy to handle ecclesiastical sacraments *and* are without doubt to be deprived of ecclesiastical benefices. Indeed, if they are known to have conferred upon the churches to which they had been attached anything from *their own* possessions or other goods, when they have been

separated from the ministry and benefice of those churches, dominion and ownership ought by the direct way to return to them *freely and* without *any* contradiction.

Chapter IV

Latin source headnote: After penance has been completed, bishops dispense with priests who have contracted marriage in fact.

The same.

Indeed, those priests who contract nuptials, which are to be called not nuptials but rather concubinages, will be able, after long penance and a praiseworthy continent life, to be restored to their office and, by indulgence of their bishop, to have its exercise.

Chapter V

Latin source headnote: Benefices that a cleric had at the time of contracting marriage are to be taken away from him; but those knowingly conferred afterward by the bishop cannot be taken away by the same bishop, but by a superior. This it says.

Innocent III, to the Bishop of Norwich.

Ensnared by diverse deceits, *they endeavor to serve God and mammon, although according to evangelical truth no one can serve two masters, because, if he loves one, he will hold the other in hatred, or, having despised one, will sustain the other.* We have learned that certain clerics of your diocese who have contracted marriage *solemnly in the sight of the Church* contend that they may retain ecclesiastical benefices, in whose manner of life the harp agrees badly with the psaltery. Since, therefore, a husband thinks how he may please his wife and for that reason is less able to think about the things that are God's, since, as though divided in two, he does not have full power over himself so as to serve more fully him from whom he receives a stipend, *by the authority of the present letters* we command your fraternity that, *supported by our authority,* you deprive clerics of this kind of the ecclesiastical benefices they have obtained in your diocese, with appeal removed, especially since the substance of ecclesiastical property is accustomed to perish through such men; unless perhaps you knowingly conferred ecclesiastical benefices upon such men, in which case we decree that they are to be despoiled of them not by you but by a superior. [*Let no one therefore, etc. Given at Ferentino, on the twelfth day before the Kalends of July, 1203.*]

Chapter VI

Latin source headnote: The son of a Greek priest, begotten of a wife, is lawfully promoted among the Latins if scandal does not stand in the way. This it says, and it is a noteworthy case.

The same, to the Archbishop of Acerenza.

When it had formerly come to our hearing that the canons of Anglona had elected *the beloved son,* the cantor of Tricarico, as their pastor, *we gave you a mandate that, after examining the election and the person more diligently, if you found the election canonical and the person suitable, you should confirm the election itself by apostolic authority, proceeding as metropolitan in the other matters.* Although it was established for you *in other respects* concerning the canonical form of the election and the suitability of the person, it nevertheless moved you, *and induced you to consult us,* that, since his father was a Greek and, according to the rite of the Greeks, had taken a wife while constituted in minor orders, he had begotten the

cantor himself of a lawful wife while in the priesthood. We therefore, considering that the Eastern Church did not admit the vow of continence, because Easterners contract marriage in minor orders and in higher orders make use of a marriage already contracted, command your fraternity by apostolic writings that, unless the custom of the region opposes this because Greeks of this kind live among the Latins, if no other canonical impediment stands in the way, you proceed without hesitation to the confirmation and consecration of the same *cantor.* [*Given at Ferentino, on the Nones of September, 1203*.]

Chapter VII

Latin source headnote: A married cleric who is not beneficed is not compelled to wear the tonsure.

The same, to the Bishop of Poitiers.

John, *son of A.,* has shown us by complaint that, although he long ago took a lawful wife *and begot sons and daughters of her,* because he had previously been ordained an acolyte, you endeavor to compel him to wear the clerical tonsure, from which scandal could be generated between him and his wife, although according to the custom of your land married clerics are not compelled against their will to wear the tonsure. Therefore, because *a man ought to think how he may please his wife, and* the same man, even when tonsured, cannot enjoy clerical privilege, by the authority of the present letters we command that you no longer molest him concerning tonsure of this kind, provided that he receives no ecclesiastical benefice by reason of which he is bound to wear the clerical tonsure, because, since he must involve himself in secular business, the tonsure of one conducting secular affairs would indeed seem to redound to the reproach of our ministry.

Chapter VIII

Latin source headnote: Married men are not admitted to ecclesiastical dignities, and they are compelled to relinquish those that they have.

The same.

Since the adornment—(*And below:* [*Cf. c. 15, On the Sons of Priests, I. 15*.]) You are henceforth not to admit those who are publicly married to ecclesiastical dignities, those being relinquished by them which they cannot retain without a depraved example and grave scandal. *Their sons also, etc.* (*Cf. c. 15, On the Sons of Priests, I. 15*.) [*Given at Rome, at Saint Peter's, on the sixth day before the Ides of January, in the ninth year, 1207*.]

Chapter IX

Latin source headnote: Married clerics do not enjoy clerical privilege in their property.

Honorius III, to H., formerly Queen of the English.

It was proposed *before us* on your behalf that some learned men of your land, having laid aside clerical habit and tonsure, publicly take wives, *being solicitous about the things of this world and how they may please their wives, who, although they apply themselves to commerce and other secular business,* nevertheless, so that they may defraud you of customary dues and owed services, resume the discarded tonsure, *under pretext of which they may be excused as clerics from things of this kind, although they serve not the Lord but rather the world, as do other married men.* Certain men also, after receiving the first tonsure, similarly contract marriage and wear the same tonsure so that under the same pretext they may be excused from the

aforesaid things, *and the venerable brother the bishop and the beloved sons the dean, archdeacon, and chapter of Le Mans endeavor to favor them as clerics in the withdrawal of your services, to your prejudice and burden.* Since, therefore, the things that are Caesar's are to be rendered to Caesar and the things that are God's to God, *and publicly married men are not ecclesiastical men while they thus entangle themselves in secular business,* we have thought that it should be tolerated with equanimity if you exact from such men the owed dues and customary services as from other married men *and receive them from the same, since the tonsure which they appear to have resumed or received not on account of religion but fraudulently to withdraw services ought not to furnish them protection in these matters.*

Chapter X

Latin source headnote: If a cleric in minor orders serves as a soldier, he is not to be compelled to wear the tonsure or clerical habit.

The same.

That your consultation may be satisfied briefly, we answer that R., a knight of your diocese, who, *as he humbly confessed to you,* formerly, when he was constituted in a younger age, *when he knew how to read or sing but little,* received only the tonsure and clerical crown, *which he is ashamed to wear among soldiers and laypersons,* is not to be compelled to wear clerical habit.

Title IV: On Clerics Not Residing in a Church or Prebend

Chapter I

Latin source headnote: It is not lawful for a bishop to transfer to another bishopric without the Pope's license by accepting it; otherwise he is deprived of the one held and the one sought. This is its meaning according to the gloss.

From the Council of Sardica.

Let it not be lawful for a bishop to transfer from his own city to another [*city*]. For the cause on account of which he attempts to do this is manifest, since no bishop has been found *in this matter* who would transfer from a greater city to a lesser one.

Chapter II

Latin source headnote: A cardinal who does not reside in his title is deposed. This it says, and this text is very noteworthy.

Leo III.

From the acts—(*And below:*) In the synod Anastasius, cardinal presbyter of the title of Blessed Marcellus, was canonically deposed by all because for five years he had deserted his parish contrary to the statutes of the canons and remains among others to this day.

Chapter III

Latin source headnote: Several dignities or churches ought not to be conferred upon one person, and a church is to be conferred upon one who is able to reside and govern by himself; otherwise the recipient loses the church, and the giver is deprived of the power to confer.

From the Lateran Council.

Because certain men, setting no measure to avarice, endeavor to receive diverse ecclesiastical dignities and several parish churches contrary to the statutes of the sacred canons [*thus*], so that, although they are scarcely sufficient to fulfill one office, they claim the stipends of many for themselves, we more strictly forbid this to be done henceforth. Therefore, when a church or ecclesiastical ministry is to be committed, let such a person be sought for this who is able to reside in the place and exercise its care by himself. But if it has been done otherwise, both let the one who received lose what he received contrary to the sacred canons, and let the one who gave be deprived of the power of bestowing.

Chapter IV

Latin source headnote: One presented to a church but not confirmed, if it appears that he does not wish to reside, ought not to be instituted by the superior; but one confirmed and not residing without a just cause is deprived, with appeal removed.

Alexander III, to the Archbishop of York.

It has been reported to us *on your behalf* that, although it was established in the Lateran Council that a church or ecclesiastical benefice be conferred upon such a person as is able to reside in the place and exercise its care by himself, certain persons presented to churches affirm that they can do this but refuse to carry it out. *Therefore you wished to consult* [*us*] *whether because of this you can reject such persons when presented, or remove them when instituted, the obstacle of appeal being taken away.* Since, therefore, words are to be taken with effect, such persons, if they have been presented, ought not to be admitted; and those admitted, *if they have been instituted,* can lawfully be removed—unless perhaps it should happen that they are absent by license of their prelates, for study of letters, or for other honorable causes. Nor ought the refuge of appeal to protect them if it was interposed against the intention of a decree of this kind. [*Because, moreover, etc.* (*Cf. c. 5, On the Right of Patronage, III. 38.*)]

Chapter V

The same, to the Archbishop of York.

We have thought fit *to grant to your fraternity that, if clerics who have obtained a benefice in churches of your jurisdiction have transferred to another diocese for the purpose of remaining there without your license and assent, it may be lawful for you to despoil them of the benefices they have from you, unless perhaps they have applied themselves to scholastic disciplines or shown you a reasonable cause why they ought not to return.* Furthermore, you ought not to receive a cleric of another diocese without commendatory letters from his bishop, unless on his behalf you have received *requests or* a mandate from the Apostolic See.

Chapter VI

Latin source headnote: One who does not reside in a benefice even of small value is deprived of it.

The same.

Upon the complaint of R., a presbyter, we learned that G., a cleric, endeavors to extort twenty solidi annually from him for his church, from which, *as is said,* he can scarcely receive the necessities of life, asserting that that benefice had been conferred upon him in the same church, *although, as we have*

learned, he does not serve the same church and has and possesses other sufficient ecclesiastical benefices from the Church. Since, therefore, it is indecent and not consonant with reason that the same man, when he has and possesses other sufficient ecclesiastical benefices, should seek a benefice from a church which he does not serve, through apostolic writings we command your fraternity that, if it is established for you that the said G. has sufficient ecclesiastical benefices or that he does not serve the same church, with the obstacle of appeal removed, you impose silence upon him concerning the aforesaid benefice.

Chapter VII

Latin source headnote: One who is in the service of a bishop receives the fruits of a benefice as though resident, except for daily distributions. Abbas.

The same.

For the future, *because it is worthy and fitting that the canons of your church, while they remain about you in your service, receive a portion of the common fund, by the present writing* we establish that nothing ought to be subtracted or taken away from *your* canons, while they are in your service, that is owed to them from the benefit of the common fund, unless perhaps these are victuals that are not accustomed to be furnished to absent persons.

Chapter VIII

Latin source headnote: A nonresident prelate or cleric who, after being cited, does not return within the term fixed for him is to be deprived, unless he has a just impediment. This it says, together with the two following chapters.

Celestine III.

It was reported to our apostolate on your behalf that the dean of your church, who chose for himself a dwelling rather in the regions of Gaul, has for a space of ten years already made it impossible for your church to have his presence. Therefore, because we do not wish the same church to be defrauded of the office of dean, through apostolic writings we command your whole body that you write to him that *he ought to visit your church and* exercise his office there as dean. But if, after being summoned, he should perhaps be unwilling to come, we grant you from then on free faculty to elect another who is able to preside over and profit your church.

Chapter IX

Latin source headnote: It has been summarized in the preceding chapter.

Innocent III, to the Chapter of Ragusa.

How your archbishop departed from the church of Ragusa by his own temerity and, though awaited, has not returned for more than four years already, *and* was recalled even by your letters, *your whole body knows fully, since you have very often laid complaints before us concerning him on this matter and requested that license to elect be granted to you. But we, waiting, thought that he should be awaited longer, to see whether perhaps he would return to his heart and go back to his church, which he had thus abandoned. Therefore, being unwilling that the church itself remain longer destitute of a pastor's solace,* through apostolic writings we command *and enjoin* your discretion that, unless perhaps he has now returned, after one month from

receipt of the present letters you elect a person suitable for you as archbishop *and take care to present your election to us as quickly as possible.* [*Given at the Lateran, 1202.*]

Chapter X

Latin source headnote: The summary is as in the chapter *On your behalf* above, under the same title.

The same, to the Patriarch of Constantinople.

Among the four animals—(*And below:* [*Cf. c. 8, On Majority and Obedience, I. 33.*]) But concerning clerics who without a just and necessary cause *in this new state of affairs* desert churches or prebends granted to them, especially without your consent being added, we have thought that this answer should be given to you: that, after they have been awaited for a suitable time, unless they return to them, they can justly be deprived of them, provided that they are not detained by a just impediment. [*Concerning monasteries, etc.* (*Cf. c. 5, On Religious Houses, III. 36.*) *Given at Ferentino, on the fourth day before the Nones of August, in the ninth year, 1206.*]

Chapter XI

Latin source headnote: If it is not known where a cleric is, he will be cited by three public edicts in his church, and, if he does not return within six months, he will be deprived of his church. This it says as far as the verse *Against them.* — (*Against them, etc.*) This short passage is not summarized because of the variety of readings and because according to one interpretation it does not pertain to the rubric.

The same, to the Archbishop of Palermo.

From the communication of your devotion *we received* [*that, when the Latins had occupied the region of Achaea, certain Greek bishops, your suffragans, terrified by fear and fleeing from their own places, left their churches; some of them, although admonished more often, nevertheless disdain to return to their sees, while some cannot now be admonished through reliable messengers because of the dangers of wars. Hence you humbly supplicated us that, giving you salutary counsel concerning this, we should deign to write to you how you ought to proceed concerning them and their dioceses. We therefore, considering that because of the novelty of the change of that land and the occurrence of new events one must proceed with very great maturity, answer your devotion thus: that you take care to cite them not once but often, namely a first, second, and third time; and if they are unwilling to appear but wish to persist in their contumacy, unless perhaps they have thought that they should be fortified by the shield of an appeal, which they are to prosecute within the lawful time, compel them by sentences of suspension and excommunication to come to your obedience.*] But in the churches of those who absent themselves fraudulently and whom a citation cannot reach, you are to cause an edict of triple citation to be published; and, if not even thus do they take care to obey, and if they desert their churches for more than six months, according to the canonical sanctions they ought deservedly to be despoiled of them. *Against them also,* as has been written above, let proceedings be taken, *namely* that you compel them by a sentence of suspension and excommunication to come to your obedience. But if not even thus can their malice be softened, let *the beloved son* B., cardinal presbyter of the title of Saint Susanna and legate of the Apostolic See, remove them from the administration of spiritual things and cause the churches over which they preside to be provided with suitable persons; but let him not promulgate a sentence of degradation against them, so that, if expedient, it may more easily be possible to act

mercifully with them. [*You asked, etc. Given at the Lateran, on the thirteenth day before the Kalends of May, in the tenth year, 1207.*]

Chapter XII

Latin source headnote: One privileged to receive the fruits of a prebend while absent in study does not use the privilege while staying in a village or castle where there is no study or a less suitable one.

The same, to the Bishop of Auxerre.

The discretion of your fraternity requested—(*And below:*) You asked furthermore whether, when at times canons to whom, for the sake of studies, it has been granted that in their absence they receive the fruits of their prebends, after obtaining license transfer themselves to villages or castles in which there is no exercise of studies or a less suitable one, the fruits of their prebends are to be conferred upon such men. To this we answer briefly that the aforesaid indulgence ought not to belong to those who commit fraud of this kind, since fraud and deceit ought to furnish protection to no one. [*Furthermore, etc.* (*Cf. c. 15, On Usury, V. 19.*) *Given at the Lateran, on the seventeenth day before the Kalends of June, in the tenth year, 1207.*]

Chapter XIII

Latin source headnote: One who swore to reside in a church lawfully absents himself for the services of the church.

Honorius III, to the Provost of Valières.

It was proposed *before us* on your behalf that at the time when you received the provostship of Valières, you took an oath to make residence, *which is called liege residence, in the church of Saint Martin of Tours, in which you hold the same provostship, promising by an oath additionally taken that you would maintain and defend the men and rights of the provostship itself. But because, while prosecuting the rights of the provostship, you sometimes cannot reside in the aforesaid church, fearing concerning the oath taken regarding the residence itself, you humbly requested that provision be made for you by us concerning this. But we* answer your petition thus: that, if, not absenting yourself fraudulently, you faithfully prosecute the rights of your provostship, since from this you ought to be accounted resident, you do not incur perjury.

Chapter XIV

Latin source headnote: A member of the Pope's household receives the fruits of his prebend in his absence, notwithstanding a contrary constitution.

The same, to the Chapter of Metz.

Since the beloved son Master Otto, *our scribe and a canon of your church, continually renders pleasing services to us and is held to be no less useful to the same church when absent than when present, we have thought that your whole body should be requested and admonished, and through apostolic writings* we command you that, notwithstanding the constitution said to have issued among you against absent canons, *out of reverence for the Apostolic See and us,* you assign him *in full* the fruits of his prebend annually while he remains in our service, *making fitting satisfaction to him concerning those withdrawn,* since our household members, who exhibit themselves as serviceable toward all around us, ought not to enjoy a lesser prerogative than each of you, whose affairs are very often advanced through them.

Chapter XV

Latin source headnote: Two canons absent with the bishop, or in his service, receive the fruits of their prebends in their absence, notwithstanding a contrary constitution of the church.

The same, to the Bishop of Meaux.

It came to our hearing *through your report* that, although in the church of Meaux there is a certain constitution *entered into,* fortified by oath and confirmed by authority of the Apostolic See, that *namely its* canons who do not reside in the same church *for six months* are deprived of the fruits of their prebends, those alone being excepted whom infirmity *of their own body* would excuse or whom it should happen to be detained in the service of the Apostolic See, *and whom the labor of pilgrimage or literary studies might draw away, the dean and certain other canons of Meaux, on the occasion of a constitution of this kind, endeavor to deprive the canons remaining in your service of the fruits of their prebends. Hence, since it is very expedient for you to retain some of those canons in your service, you humbly supplicated us that we deign to provide for your necessity in this matter by the moderation of apostolic provision. Therefore, wishing so to moderate the aforesaid constitution that the said church may perceive fruit from it and you may not incur loss through its abuse, by the authority of the present letters* we decree that two of the canons of the aforesaid church, existing in your service, receive in full the fruits of their prebends, since those who remain with you for your service and that of the church itself ought not to be called absent but present.

Chapter XVI

Latin source headnote: If a church suffers a lack of ministers, those privileged concerning absence are compelled to return by withdrawal of revenues. This it says, and it is a good text and can be much practiced.

Gregory IX, to the Patriarch of Antioch, Legate of the Apostolic See.

Since ecclesiastical benefices are assigned for this—(*And below:*) Indeed, it has become known to us that the church of Antioch is almost destitute of ministers because many of its servants are absent. Hence we command that, notwithstanding apostolic indulgences and the license of your predecessors, you recall the absent canons and assessors to reside in the aforesaid church; and if they do not come, while they are absent you are to cause the same church to be fittingly served from their benefices, converting to the use of the same church what remains from the aforesaid benefices.

Chapter XVII

Latin source headnote: A nonresident cleric is deprived of his benefice if, after being admonished, he does not return and does not allege a just excuse. This it says, and it is a noteworthy case.

The same.

Let it be lawful for you to despoil clerics who have obtained benefices requiring residence in churches of your jurisdiction, if they have transferred to another diocese for the purpose of remaining there without your license and, after being admonished, have not returned, of the said benefices, unless they have shown a reasonable excuse.

Title V: On Prebends and Dignities

Chapter I

Latin source headnote: There is no succession to the goods of a church by right of consanguinity.

From the Council of Poitiers.

Let no one of the clergy or *of the* people seek to have ecclesiastical goods for himself by right of consanguinity.

Chapter II

Latin source headnote: It is not lawful for a bishop to ordain anyone without a title.

In the Body of Canons.

Let it not be lawful for any bishop to ordain clerics and furnish them no means of support; rather, let him choose one of two alternatives: either let him not make clerics, or, if he makes them, let him give them that from which they can live.

Chapter III

Latin source headnote: The goods of churches are common, and no one ought to claim them for himself as his own.

Gregory, to Anthemius the Subdeacon.

No reason permits that what is recognized to have been given for the common utility be applied to anyone's private uses.

Chapter IV

Latin source headnote: One who ordained to sacred orders without a title someone not having from his own property that from which he may live is bound to provide for him from his own property until he has obtained some title.

Alexander III, in the Lateran Council.

If a bishop ordains anyone as deacon or presbyter without a certain title from which he may receive the necessities of life, let him furnish necessities to him until he assigns him in some church suitable stipends of clerical service, unless perhaps the one so ordained can have the support of life from his own or his paternal inheritance.

Chapter V

Latin source headnote: Bishops ought not to permit anyone to hold several churches.

The same, in the same council.

Because the ambition of certain men has *now* advanced so far that they are reported to have not two or three but *six or* more churches, although they cannot expend the provision owed upon even two, we command that this be corrected through our [*most beloved*] brothers and fellow bishops; and we wish the lack of those who are able to serve churches [*worthily*] to be relieved from the multitude of

prebends, which is hostile to the canons, introduces matter for dissolution and wandering, and contains a certain danger of souls.

Chapter VI

Latin source headnote: By mandate of the Pope, one is not bound to provide for him who concealed a benefice in the letters, or for whom provision cannot be made without scandal. This it says; and in its last point this text is always to be held in mind.

The same.

Since we are bound *by the duty of the governance undertaken to attend to the provision of clerics, we direct our writings for them to you and to other prelates of churches, and sometimes even concerning the provision of those who are known to have another sufficient benefice. But because sometimes we do not know that those for whom we write to you and other prelates of churches have another benefice,* if you have received *our requests and* mandate for the provision of someone, *or shall at some time receive them,* who has another benefice from which he is able to be suitably sustained, unless perhaps mention of this is made in the letters themselves, or if provision cannot be made for him without scandal, we bear it with equanimity if you have not thought that *our requests and* mandate should be executed for him.

Chapter VII

Latin source headnote: One having several churches is compelled to choose one and relinquish the other.

The same.

Upon the report of I., a presbyter and *bearer of the present letters,* we learned that, although he had two churches, your archdeacon despoiled him of one *of them* and assigned the same to a certain presbyter named G.; but the aforesaid I., perceiving that he was burdened in this respect, appealed to the metropolitan, namely the Archbishop of Reims. And when *the same I.* had been restored to the aforesaid church by mandate of the same archbishop, *the aforesaid G. appealed to our hearing. But afterward* the aforesaid archdeacon bound the same I. with the bond of excommunication because, when summoned to his presence so that he might *grant to the aforesaid* G. *one of the aforesaid churches,* he disdained to come. But we, causing him to be absolved from the sentence by which he was bound, *have thought that the same man should be remitted to you. Wherefore* we command you that, *the parties having been summoned before your presence,* after one of the aforesaid churches, whichever he wishes, has been left to the aforesaid I. *with its appurtenances,* you do not delay in assigning the other to the aforesaid G., if he has no church; otherwise, without delay assign it to another suitable person lacking an ecclesiastical benefice.

Chapter VIII

Latin source headnote: Prebends and dignities ought not to be divided, nor even exchanged.

The same, in the Council of Tours.

While the greater benefices of a church remain in their integrity, it seems exceedingly unbecoming that the prebends of lesser clerics should suffer division. Therefore, so that the Church may have

unity established in its lesser members just as in its greater ones, we forbid the division of prebends or the exchange of dignities to take place.

Chapter IX

Latin source headnote: One received as a canon by promise of the chapter ought, when the opportunity has offered itself, to have a prebend. See chapter 2, *On the Granting of Prebends*, in the Sixth Book, with the gloss.

The same, to the Archbishop of Canterbury.

It has been reported *to our ears that, although our beloved son Master Ja. has been canonically instituted by you in your church and has full power as a canon in the choir, chapter, and other things whose use is common, you have not yet taken care to assign him a prebend according to your promise, although several prebends are said to have become vacant in that church after your promise*. Therefore, because it is worthy *and consonant with reason in every way* that, after Master I. has been instituted a canon in your church and had from you a promise that the first prebend should be conferred upon him when one became vacant in that church, he ought to enjoy the integrity of a prebend, *especially since, as is proposed to us, he is learned and discreet, by apostolic writings and by way of precept* we command your fraternity that, if the same I. has been canonically instituted in your church and has power as a canon in the choir and chapter and in other things whose use is common, you liberally grant and assign him, according to your promise, a prebend if any *of the old ones in that church* is now vacant, or when one shall first become vacant there, *every occasion and contradiction ceasing, in such a way that you can deservedly be commended for constancy and gravity and we are not compelled to write to you again because of this,* because it is not fitting that one who is known to have been received as a canon should lack a prebend.

Chapter X

Latin source headnote: Religious cannot diminish the revenues of their churches with respect to the portion owed to rectors or vicars, nor divide parishes.

The same, to the Canons Regular and Monks of the Diocese of York.

The root of avarice, which is the service of idols, *ought to be rooted out more diligently by those who, renouncing the vanities of the world, have chosen to serve the Lord in religious habit*. We have understood, *however,* that in your churches from which you have been accustomed to receive fixed pensions, you have diminished the portions or ancient revenues that certain clerics of those churches are known formerly to have had. Therefore, *because this proceeds from the root of avarice and cupidity, which you ought to avoid in every way, by apostolic writings and by way of precept* we command your fraternity that, if you have presumed *unduly,* without the *counsel or* consent of your archbishop, *after he obtained the archbishopric,* to diminish any portions or ancient revenues of clerics or to divide parishes, you restore *them* to their former integrity, *and preserve intact and unimpaired the reasonable and ancient pensions of the clerics who ought to serve at the altars; and in churches from which you have been accustomed to receive fixed pensions from them, in no way diminish by rash presumption the portions or ancient revenues that clerics had in them before the time of that archbishop and after he obtained the archbishopric, and do not presume in any way to divide the parishes of churches by your own authority.*

Chapter XI

Latin source headnote: A prelate and chapter can impose an honorable burden upon a vacant prebend, to which the prebendary is bound.

The same, to the Provost and Chapter of Lille.

It was signified to us that, by common [*consent and*] will, you gave one prebend in your church to a certain priest in such a way *indeed* that he ought to celebrate the Mass of Saint Mary daily unless burdened by bodily infirmity, and could not relinquish your church except by the common consent both of the provost and of the chapter, or delegate the anniversary of that prebend to anyone. We confirm this institution to this extent: that the aforesaid priest, unless impeded by bodily infirmity, ought assiduously to render his service to the aforesaid church and, as frequently as he can, with his honorable conduct and due devotion preserved, celebrate the solemnities of Masses; nor is it lawful for him to withdraw this service from it, whether for the sake of pleasure or by transferring himself to another church.

Chapter XII

Latin source headnote: Upon the presentation of religious, no one ought to be instituted by the bishop in their churches unless a fitting portion of the revenues is first assigned to him.

The same, to the Archbishop of Worcester.

Concerning the monks, *however,* who burden vicars of parish churches *to such an extent* that they cannot maintain hospitality *or have an honorable sustenance,* you are to have that *care and* providence that you receive no one upon presentation of the monks unless so much from the revenues of the church has been assigned to him before you that he can pay the episcopal dues and have a fitting *and sufficient* sustenance. *But from those priests to whom the care of souls has been committed by you or your predecessors in churches of the monks, you will be able to withdraw it unless an honorable and sufficient sustenance has been assigned to them by the monks.*

Chapter XIII

Latin source headnote: No one can have several dignities or personates in one or in diverse churches.

The same, to the Archbishop of Salerno.

To these matters: although *that custom is not consonant with reason according to which, if a cleric dies from the Kalends of March to the Kalends of November, he grants, according to his own will, the right to receive the entire benefice that he has for that year, nevertheless, because it is preserved in many churches, you will be able sufficiently to tolerate it in your archbishopric, especially if at his death the cleric is burdened by a load of debts. And* it is contrary to all reason that one cleric should hold several dignities or personates in one *church* or *in* diverse churches, since each office in churches requires the assiduity of persons.

Chapter XIV

Latin source headnote: One having several dignities is compelled to relinquish one.

The same, to the Archbishop of Bordeaux.

Furthermore, concerning *Archdeacon* G., who has been constituted archdeacon in your church and that of Toulouse and has been regularly professed in each church, and who, *after collecting those things that he can collect in the archdeaconry of your church, returns to Toulouse without your knowledge and remains there for a year or more,* we command your prudence that you cause the same *G., if the matter is so,* to be content with one archdeaconry, whichever he prefers, *occasion and appeal ceasing.*

Chapter XV

Latin source headnote: If one elected to a second church is unwilling to relinquish the first, the electors can withdraw and not accept the elect.

The same, to the Archbishop of Genoa.

Since you are not unaware that one church ought to belong to one priest, *we regard it as astonishing and unworthy if you wish to grant one person a place in several churches and introduce into your episcopate the custom of the Gallican Church, which, since it receives one person to several benefices contrary to the statutes of the sacred canons, is not approved by us, although it cannot be corrected because of the multitude of delinquents.* Therefore, since the messenger of *that* presbyter who contends that he has a place in two churches, and certain clerics of the other church *in which he said that he had a place,* have come to our presence against him, we, considering that it is not fitting *or honorable* for the same presbyter to have a place in two churches, *will and* command that you cause him to remain content with *that* benefice which he has. But if perhaps the archpriest and clerics of the other church consented to him, since they now dissent, to their scandal, he ought not [*either*] to seek or have a place in that church.

Chapter XVI

Latin source headnote: When someone has been ordained to sacred orders by a bishop without a title, no one presenting him, the ordainer or his successor is compelled to provide necessities until he has a title.

Innocent III, to the Bishop of Zamora.

Since according to the Apostle one who serves the altar ought to live from the altar, and one who is chosen for the burden ought not to be repelled from the reward, it is apparent by similitude that clerics ought to live from the patrimony of Jesus Christ, to whose service they are assigned, as the very rationale of the name persuades. For since clerics are named from κλῆρος, which is lot or inheritance, because in their ordination either they are taken into the Lord's inheritance or obtain an inheritance in him, so that they can truly sing with the Prophet, saying, "The Lord is the portion of my inheritance," it is worthy that they be sustained by the stipends of the church in which and through which they are enrolled in divine services. But although our predecessors wished the ordinations of those who are promoted without a certain title to be void and empty, to the injury of the ordainers, we nevertheless, desiring to act more benignly, will that those ordained be provided for by the ordainers or their successors until through them they obtain ecclesiastical benefices, *lest perhaps we seem with hardened face to neglect the cries of poor clerics, which we believe enter the ears of the Lord of Sabaoth.* Hence it is that, since *the beloved son* G., bearer of the present letters, was, *as he asserts,* promoted to the subdiaconate by *G. of good memory,* your predecessor, no one presenting him, [*and has obtained no ecclesiastical benefice,*] through apostolic writings we command your fraternity that, if those to whom we have thought that his examination should be committed, after you have lawfully been

cited so that you may be present personally or through a suitable representative and may be permitted to propose whatever you reasonably think should be proposed concerning both the suitability of the person and the amount of the benefice, find him suitable *and not unworthy of ecclesiastical benefice,* you suitably furnish him the necessities of life until through you he has obtained a competent ecclesiastical benefice in the church of Zamora or *in* another, knowing for certain that, if through their examination he is found suitable and you neglect to provide for him according to our mandate, when this becomes known to us through their letters we shall compel you by ecclesiastical severity to execute it, *because, just as we do not wish to command unjust things, so, when we command just things, we wish to be heard effectually.* [*Given at the Lateran, on the third day before the Nones of April, 1198.*]

Chapter XVII

Latin source headnote: One who knowingly conferred upon an ignorant person a prebend that he could not confer, when that prebend has been evicted, is bound to confer another that he can confer. This it says, and it is a singular disposition.

The same, to the Archbishop of Sens.

Among other things, [*by which we are instructed for the governance of the universal Church, he whose grace, not our merit, advanced us to its governance left us a wondrous and marvelous example of his kindness, namely in this: that, just as we see was done by the Lord concerning Blessed Peter, whose successors we are, though unworthy, he chose the weak things of the world so that he might confound every strong thing, mercifully foreseeing that he who before his calling had sustained the weight of secular passions, having experienced the frailty of the human condition, would know better how to suffer with his brothers and more suitably how to pity them, while, conscious of himself, he would have in himself manifest proof in similar things. Setting these things before our eyes, after our beloved son P. de Cassaneto explained to us the sequence of his business, we were moved by paternal piety toward him. Since certainty concerning the matter that we had handled while we formerly discharged a lesser office supported his account in part with testimony of fuller credibility, we assumed the endeavor of a more solicitous mind to assist him and relieve his useless labors, lest his pitiable affliction, which was already threatening him with doubtful perplexity, complain that the Apostolic See was devoid of its customary mercy and the remedy owed.*] *Indeed, we believe it to be sufficiently known to you how,* after G. (*de Bochar*), formerly a canon of Laon, [*the beloved son,*] had resigned the prebend of that church, which by an exchange of prebends ought by apostolic authority to have been assigned to *the beloved son* H., then a Siclunian canon, *by the dean of Reims of good memory,* Master P. was invested with that same prebend by [*our venerable brother*] the Bishop of Laon, *and was invested both in choir and in chapter by the dean and canons of Laon, the due solemnities having been employed according to the custom of the church of Laon.* When a controversy concerning this had arisen between the master himself and the said H., [*and an appeal had been interposed to the Apostolic See, although the same master, coming to the same See with great labors and expenses, after a long wait that, with the inclemency of a dangerous season threatening, afflicted him with much weariness and the hardships of diverse persecutions and brought him almost to extremity, had completed his business against the aforesaid H. according to his desire, nevertheless, when he was afterward absent because of illness, at the instance of the often-mentioned H., then present at the Apostolic See,*] all things were retracted by Pope C. *of good memory,* our predecessor, [*by counsel of the brothers,*] *and thus the master himself was wholly frustrated of his hope* [*and after his deprivation was compelled to approach the Apostolic See again, seeing that no remedy remained for him unless the Apostolic See should think that merciful provision ought to be made for his manifold desolation. Therefore, because of these and many other things that rendered his cause favorable, we, bearing a paternal affection toward him, by mandate*

strictly command the aforesaid dean and canons of Laon that they have the same master, who is known to have been instituted in that church by the said bishop and admitted by them as a brother, as a canon both in choir and in chapter, with that which the Apostolic See definitively adjudged concerning the aforesaid H. preserved, notwithstanding anyone's appeal or contradiction, and treat him with fraternal charity in the other things that pertain to a canon. Furthermore, we firmly forbid them to presume in any way to receive anyone as a canon until the aforesaid master has fully obtained the benefice of a prebend in the aforesaid church. Hence, by apostolic writings and by way of precept, we command your fraternity that, if the aforesaid dean and chapter neglect to fulfill our mandate, you do not omit, after diligent admonition has first been made, to compel them by ecclesiastical severity, with the obstacle of appeal removed, to carry out his reception as has been said, restraining by the same censure any who think that they should oppose the apostolic mandate. Know, moreover, that, because we do not wish the same bishop to be able to excuse himself under occasion of some promise or by authority of any rescript obtained from the Apostolic See in order to elude our mandate,] we have given the aforesaid bishop a *strict* command that, until the same master has obtained a prebendal benefice in that church, he is not to presume to assign a prebend to anyone else *in any manner whatsoever*; but if perhaps he presumes to do so, we decree it [*wholly*] null and void. For it is fitting that, because he assigned him a prebend that he could not assign by law, he assign him one that he can assign by law, lest he seem to have assigned him a prebend fraudulently. [*Given at Rome, at Saint Peter's, on the tenth day before the Kalends of May, in the first year of our pontificate, 1198.*]

Chapter XVIII

Latin source headnote: The election of one who possesses several dignities and prebends is quashed, and likewise if he is held by any vice written here.

The same, to the Bishop and Cantor of Tournai.

Since some time ago [*a question had been brought to the Apostolic See concerning the election of the beloved son I. de Bethunia to the provostship of Siclinium, because omission had been made concerning this, the names of the dignities in which the same I. is said to abound having been suppressed, and after an appeal interposed to us confirmation had been obtained from the beloved sons the dean and provost of Soissons, it was established by common deliberation that the commissory letters, as obtained by surreption, should lack the weight of firmness, as should what had followed from them. Moreover, when the beloved sons R., a canon of Siclinium, for himself, and R. the archdeacon and Master W., his canons, with their letters of ratification, and Nicholas, a canon of the same church who asserted that he was the messenger of the aforesaid I., came because of this to the Roman Church, we thereafter gave them our beloved brother Hugh, cardinal presbyter of the title of Saint Martin, as auditor. In his presence, many things proposed on either side having been reduced to writing and also reported to us in summary, because a proctor appeared from only one party, the other not appearing through contumacy, we ought not to have defined anything concerning the principal business, since the merits of causes are disclosed by the assertions of the parties.*] But because certain things were objected by the *already-mentioned* R., canon of Siclinium, against the *aforesaid* I. de Bethunia, *which it was not fitting to pass over in silence,* namely the multitude both of dignities and of prebends, the vice of ambition and avarice, to which he has not yet set an end, and because, contrary to the tenor of our definition and the statutes of the Lateran Council, he thrusts and has thrust himself forward to obtain the provostship of Siclinium, and because [*on*] the day of his intrusion he presumed to minister before confirmation, as also after the confirmation had been quashed, *which he obtained from the judges of Soissons,* [*having been obtained, we*] command you *through apostolic writings* that, if you find that the aforesaid I. has several other dignities and prebends,

or find to be true any other of the foregoing things sufficient for his quashing, you impose silence upon him concerning the aforesaid provostship, *with the obstacle of appeal removed,* absolving the church of Siclinium from his suit, since many things are tolerated through patience that, if brought into judgment, ought not to be tolerated when justice requires.

Chapter XIX

Latin source headnote: A prebend is owed to one received as a canon as soon as the opportunity offers itself, and meanwhile he will have the daily distributions.

The same, to the Archbishop and Archdeacon of Sens.

The beloved son T., a canon of Lincoln, *established in our presence,* proposed that, although by mandate of Pope C. *of good memory,* our predecessor, G., *formerly* Bishop of Lincoln, assigned him a certain prebend in the church of Lincoln, *and the same was confirmed to him by our aforesaid predecessor,* because the chapter of *Lincoln* disdained to receive him to that *prebend, the beloved sons the abbots of Clairvaux and Longpont, by authority* [*of our aforesaid*] *predecessor, when it was unwilling in any way to cease from contradiction, subjected it to ecclesiastical interdict. But afterward, coming to our presence, he obtained our writings to the beloved sons the abbots of Melun and Quincy. But when he could not obtain his justice through them, we gave a mandate, as he asserts, to our venerable brother the Archbishop of Reims, cardinal of the Holy Roman Church, then Bishop of Palestrina and legate of the Apostolic See, that he cause the aforesaid sentence of interdict, as it had reasonably been promulgated, to be firmly observed with appeal set aside. But when the same archbishop prolonged the business and the same man, after manifold labors, had almost despaired of advancing the business, failing in expenses,* at the instance and by the authority of the Archbishop of Reims, then Bishop of Palestrina and legate of the Apostolic See, such a settlement intervened between him, *T. on one side,* and *our venerable brother R.,* the bishop, and *the beloved sons* the canons of Lincoln *on the other:* that, after he had been received by them as a canon and *as a brother through the hand of the aforesaid archbishop,* and a stall in choir and participation in all divine things had been granted to him, he ought not to receive the fruits of *any* prebend *of the same church* except in the place of the next one to become vacant. *But although we love the aforesaid archbishop in the Lord with sincere charity and wish to defer to his honor, nevertheless, because in those things that are known to be attempted contrary to canonical sanctions we neither wish nor ought to defer to him, we have thought that what was done unlawfully by him in this matter should be annulled, while approving what was done lawfully.* Therefore, since the reception of the said T. as a canon *and as a brother* does not oppose canonical statutes, while there is no doubt that awaiting a prebend to become vacant opposes the Lateran Council, we, disapproving the unlawful act of the same legate and approving what is lawful, because it seems unworthy that *one who has* been received as a canon should be defrauded of the benefice of a prebend, command your discretion *through apostolic writings* that you compel the said bishop and canons *of Lincoln, if what is asserted is true,* after admonition has been given, *by ecclesiastical censure,* with appeal set aside, not to delay in assigning him a prebend when the opportunity offers itself, causing the daily portions made in the aforesaid church to be assigned to him without any diminution, *restraining contradictors by ecclesiastical censure with appeal set aside.* [*Given at Rome, at Saint Peter's, on the thirteenth day before the Kalends of May, in the ninth year, 1206.*]

Chapter XX

Latin source headnote: An election does not hold when two persons are elected simply to one prebend.

The same, to the Bishop of Brescia.

The devotion of your fraternity—(*And below:* [*Cf. c. 10, On Him Who Knew His Wife by Consanguinity, IV. 13.*]) *Furthermore, you consulted* whether, since it often happens that two clerics are elected to one prebend because of the *excessive* importunity of petitioners, *such an election is to be confirmed or rather annulled.* We, *therefore,* considering that, if two held one prebend, that would be contrary to the Council of Tours, which forbids the division of prebends, and, if one of them obtained the prebend itself, the other would remain in expectation contrary to the statutes of the Lateran Council, answer your inquiry thus: that such an election is wholly to be quashed by rigor of law. [*Furthermore, etc. Given at Rome, etc., 1206.*]

Chapter XXI

Latin source headnote: If two persons elected to some dignity submit to judges by compromise, the judge can confirm one and, for the good of peace, make provision for the other from the revenues. This is a most beautiful disposition, and you do not have one similar in the whole body of law.

The same.

Unless both *those* who made the ordinance and those concerning whom the ordinance was made in your church regarding the business of the priorship were provident and honorable men, we would hold that ordinance very suspect because of the destructiveness of the example. Therefore, what after prolonged contention was ordained concerning one of the two elect, that he should have the priorship, seems to have been established according to justice by delegated jurisdiction. But what was ordained concerning the other, that he should receive annually twenty pounds from the revenues of the chapter and forty *pounds* from the revenues of the priorship, is understood to have been commanded according to providence by arbitral power, since submission had been made to the delegates, who confess that, while retaining the authority committed to them, they ordained this for the good of peace and utility. Therefore, because this ordinance has been received by all, and the prior and chapter can lawfully furnish provision of this kind from their revenues for the aforesaid causes—not indeed by agreement of the parties but by command of the judges—we tolerate it with this moderation employed: that not the dignity of the priorship but the person of the prior remain burdened with the payment of forty pounds, lest perhaps [*even*] concerning the revenues some division of the priorship seem to have been made, such that, when that prior is dead, his successor is in no way bound to the payment of forty pounds. [*Given at Rome, at Saint Peter's, on the seventh day before the Ides of February, in the ninth year, 1207.*]

Chapter XXII

Latin source headnote: Canons privileged by the Pope concerning a certain number, if they voluntarily received someone beyond the number, cannot use the exception of number against those obtaining provision from the Pope.

The same, to the Bishop of Valence and the Abbot of Vatian.

For the provision of those—(*And below:*) *For the beloved son Master P. Audoen., who is known to have made a longer stay at the Apostolic See and had not yet obtained a competent ecclesiastical benefice, although he was suitable to obtain it, by our letters and by way of precept* we commanded the Archbishop of Bordeaux to cause a competent benefice to be assigned to Master P. in one of his churches where he recognized it

to be expedient for him, *every delay and excuse having been set aside, and the obstacle of anyone's contradiction and appeal having been removed,* restraining by ecclesiastical severity contradictors *who should think rashly to oppose him concerning this. But the archbishop himself, as he intimated to us by his letters, considering the knowledge and probity of the aforesaid master and recognizing him as suitable to obtain such a benefice, after receipt of our mandate,* commanded the dean and chapter of Saintes by our authority to admit him as a canon and brother *out of reverence for the Apostolic See and to treat him with fraternal charity.* And when those canons resisted *his requests and our mandates* and opposed to him an indulgence concerning a number of forty canons, *which they boast that they have from the Apostolic See,* because the *same* archbishop *manifestly* recognized that they, in elusion of our mandate, were irreverently abusing as their own the indulgence granted to them, *and it was clearly established for him that at that time there were not merely forty canons in the same church but more,* he invested the aforesaid master with a prebend and canonry of the church of Saintes *with your consent and will, brother bishop, and by counsel of prudent men,* binding contradictors with the bond of excommunication. (*And below:*) But because we wish what was providently done by the said archbishop concerning the aforesaid master by our authority to obtain *due* firmness, through apostolic writings we command *and more strictly enjoin* your discretion that, if it is established for you that the aforesaid canons did not observe the indulgence they have concerning a certain number of canons and received someone as a canon beyond the established number by their own authority, since they ought not to impose upon us a law that they themselves neglect to observe, you declare that the sentence of excommunication pronounced against them by the aforesaid archbishop is, *by our authority,* to be observed, with the obstacle of *any contradiction and* appeal removed, until they receive the often-mentioned master as a canon and take care to assign him those things that pertain to the canonicate, with a stall in choir and a place in chapter.

Chapter XXIII

Latin source headnote: An unbeneficed person having a sufficient patrimony is lawfully promoted to sacred orders.

The same, to the Archbishop of Besançon.

We answer your questions that clerics constituted in minor orders who have from patrimonial goods that from which they can be fittingly sustained, although they have not yet obtained an ecclesiastical benefice, can be promoted by you to higher orders, provided that no other canonical impediment stands in the way. [*But monks, etc.* (*Cf. c. 39, On Witnesses, II. 20.*) *Given at the Lateran, on the eleventh day before the Kalends of April, in the eleventh year, 1208.*]

Chapter XXIV

Latin source headnote: A benefice can be conferred upon an absent person through an intermediary, and it makes no difference whether the absent person is invested through the intermediate person or the intermediate person is invested for the absent person. This it says by joining both interpretations, and it is a noteworthy case and is practiced daily.

The same, to the Bishop of Zamora.

Coming to the Apostolic See, *the beloved son B., a brother of the Hospital of Jerusalem, asked us on your behalf whether an absent cleric can, for the sake of studies, be invested with an ecclesiastical benefice, and whether, if an abducted girl, carried into another diocese, consents to her abductor in the face of the Church, a marriage of this kind*

is to be held lawful. We therefore answer your inquiry thus: that *both* an absent cleric can be invested with an ecclesiastical benefice through another, or another, rather, for him. *And an abducted girl, etc.* (*Cf. c. 7, On Abduction, V. 17.*)

Chapter XXV

Latin source headnote: If two persons are received simply to one canonicate and prebend, the reception does not hold, even when apostolic authority intervenes. This it says, and it is a noteworthy chapter; therefore always hold it in mind and note it.

The same, to the Bishop of Troyes.

The beloved son P., *our* cardinal presbyter *of the title* of Saint Pudentiana, having been appointed auditor for the beloved sons R. [*de Avalon*], cellarer of Troyes, and R. [*de Noa*], *a cleric,* your proctor, the same cellarer proposed before him that, when he freely resigned into the hands of the Archbishop of Reims, then legate of the Apostolic See and intending to provide for his nephew G. in the church of Troyes, the prebend that he held there, the said legate instituted the aforesaid G. and the same cellarer as canons of Troyes, and the chapter of Troyes assigned to both a stall in choir and a place in chapter, and the same archbishop assigned the fruits of the aforesaid prebend to be divided in common until the same G. had obtained the full prebendal stipend *of the church, a sentence of excommunication having been promulgated against those who should presume to contravene.* The general proctor of your predecessor [*of good memory*], who was then acting in the regions of Constantinople, afterward approved their reception. The said cellarer is also known [*afterward*] to have read the lesson and Gospel in his week, and, as a canon of Troyes, was present both at the election of the dean and bishop and at the handling of other business, and obtained through the aforesaid chapter a certain house that was accustomed to be assigned only to a canon. And you, when after your consecration you came to the same church, received him with the other canons to the kiss, although *at that time* only canons were admitted to the kiss, and for two years you raised no question against him concerning the foregoing. On account of this he petitioned that we deign to restrain you from undue molestation of him concerning this. *But the said R., your proctor, proposed in opposition that, when the same cellarer had resigned his prebend into the hands of the aforesaid Archbishop of Reims, the archbishop invested his nephew with one half* [*of it and the said cellarer with the other*] *half,* [*which he still presumes to retain to your prejudice and burden, not permitting you freely to dispose of it as is known to pertain to you. And although our letters concerning this had been obtained to the beloved sons the dean and Masters G. Cornutus, a canon of Paris, and S., a canon of Reims, the cellarer finally appealed to us for the sake of frustration, so that he might burden you with labors and expenses.*] *The same* proctor of yours also proposed in opposition that, *since a certain number of canons had formerly been established in the church of Troyes and fortified by oath of the chapter, the aforesaid archbishop, who, although he had been legate in Germany, nevertheless had not been enjoined the office of legation in the province of Sens, could not make an institution of this kind as legate; indeed, even if he had been legate in that province,* it was not lawful for the aforesaid legate to institute two canons together to the one *individual* spiritual right that was vacant there, *contrary to the canonical sanctions.* For if two persons had one prebend, that would be contrary to the Council of Tours, which forbids the division of prebends. But if, after two persons had been received *as canons and brothers,* a prebend were given to one alone, the other would remain in expectation contrary to the Lateran Council. Furthermore, although in a church in which there is no certain number of prebends someone can be assumed as a canon even when no *prebend* is vacant, since he is understood to be elected to a certain right that is newly created by the consent of the

electors, is born with the one elected as canon, and ends with the deceased, nevertheless in a church that has a determined number of prebends, when only one *individual* right is vacant, two cannot be elected together to it, because a spiritual right of this kind cannot be divided or shared between them; although sometimes those to whom the election pertains can by common consent increase the number of prebends by newly creating a certain spiritual right, unless perhaps some statute fortified by oath stood in the way, or one to which confirmation of the Apostolic See had been added, with a clause of prohibition of this kind appended, that, if anything were done contrary to it, it would not be valid. On this account the said proctor asserted that the aforesaid institution was null, since in the church of Troyes, *as has been premised,* there is a certain number of prebends that the chapter or legate in no way intended to increase or to create any new right, [*which he proposed could be inferred from this: that one person was not instituted to the vacant prebend and the other simply, but both were received to the single prebend vacant in the aforesaid manner. Nor could the chapter of Troyes, to which the collation of prebends in no way pertained, or the said proctor of your predecessor approve a reception of this kind, as one attempted contrary to the canons. He said that it likewise in no way prejudiced you that you had admitted the aforesaid cellarer to the kiss among the canons of Troyes or that you had remained silent for some time concerning this business, since at that time you were ignorant of the customs of your church and of those things that had been done less lawfully in it. But to these things the cellarer answered thus: that, since the same archbishop had caused the letters of his legation to be read in the chapter of Troyes and at that time was held by all to be legate, whether he had been legate in that province ought not further to be called into doubt, especially since in the aforesaid letters that you had obtained against him you had thought that the aforesaid archbishop should be named legate. He added further that someone can lawfully be elected to spiritual fraternity as a canon and brother even when no prebend is vacant, adducing as an argument for this a certain decretal letter in which it is read that, when T., a cleric, while no prebend was vacant in the church of Lincoln, had been received as a canon and brother by the bishop and canons of Lincoln through the intervening authority of the aforesaid archbishop, a judge delegated by us, in such a way that he received the fruits of no prebend except in the place of the next one to become vacant, we, considering that the reception of the said T. as a canon and brother did not oppose canonical statutes and that there was no doubt that awaiting a vacant prebend opposed the Lateran Council, disapproving what was unlawful and approving what was lawful, since it seemed unworthy that one who had been received as a canon and brother should be defrauded of the benefice of a prebend, gave a mandate to the bishop and canons of Lincoln that, if the matter stood thus, they take care to assign to the same T. a prebend when the opportunity offered itself. He alleged further that letters of this kind are frequently obtained from the Apostolic See, that in a church in which there is a certain number of prebends, when no prebend is vacant, someone be received as a canon and brother and a prebend be conferred upon him when the opportunity offers itself. Likewise, although the Council of Tours forbids the division of prebends, nevertheless the Roman Church, by approving as canons the reception of those who were assumed to half prebends, sometimes commands that the divided prebends be made whole for them. But it was answered in opposition to this that, although the Roman Pontiff sometimes commands, contrary to the Council of Tours, that a prebend halved as regards temporal revenues be made whole for the one upon whom a vacant spiritual right had been conferred with due integrity, nevertheless, because someone was in fact received to a half prebend of this kind when he could not be so by law, he is in no way accustomed to command that; and from the fullness of power he can grant that someone be received to one spiritual right that is not vacant, utility or necessity having been weighed, as is found in the canon concerning Augustine, who, promoted and consecrated in a new manner, while Bishop Valerius of the church of Hippo remained unharmed, came into the episcopal chair but did not succeed him. And just as it is read in the decretal alleged above concerning a prebend not vacant but nevertheless granted and confirmed by the Roman Pontiff to a certain cleric in the church of Lincoln, and*

concerning his reception by the executor to that same prebend even though it was not vacant, nevertheless the aforesaid archbishop, even if he had been legate in the province, without at least our special license could not, contrary to the tenor of written law, institute his nephew and the aforesaid cellarer to the one spiritual right that was vacant in the aforesaid church, in which there was a certain number of prebends, since this opposed not only the Council of Tours but also the Lateran Council, especially since he intended neither to create a new right nor to increase the number of prebends, which is gathered from the fact that, after procuring the resignation of the cellarer, he instituted them to the one vacant prebend.] Hence, *after we had understood these and other things,* we thought that the aforesaid cellarer, *who it was established had first freely resigned the prebend,* should by definitive sentence be condemned, *by counsel of our brothers,* to restitution of those things that he held by reason of the aforesaid institution, imposing silence upon him concerning the prebend itself or a part of it, in such a way that through this no prejudice is generated against the aforesaid G., *especially* since a thing done between others regularly does not prejudice others, *according to canonical and lawful sanctions.* [*Let no one therefore, etc. Given at Rome, at Saint Peter's, on the Kalends of May, in the thirteenth year of our pontificate, 1210.*]

Chapter XXVI

Latin source headnote: Two prebends can be made from one vacant prebend if its resources suffice; otherwise the one dividing it is bound to make them whole.

The same.

When a certain prebend in your church was vacant, you constituted two from it and, with the consent of your chapter, assumed two canons to them. When one of them entered *at the Apostolic See* upon the way of all flesh, the prebend that the deceased had held was obtained by authority of the Apostolic See by a certain cleric named Hippolytus. But since the same Hippolytus troubles you concerning the integrity of the prebend through certain letters of ours, and the other proposes that he has the same right against you, you have asked what you ought to do. Concerning this we have thought that this answer should be given to *your fraternity:* that, since the statutes of the Council of Tours forbid division of prebends, you are bound to make a whole prebend for each of them from those things that happen to become vacant, unless perhaps for a reasonable cause two were constituted from the aforesaid vacant prebend and the revenues of each are so great that through each, provision has been made for each in a competent benefice. [*You, finally, etc. Given at the Lateran, on the sixth day before the Ides of January, in the sixteenth year of our pontificate, 1214.*]

Chapter XXVII

Latin source headnote: If the Pope commands a chapter to receive someone as a canon and confer a prebend if any is vacant, and, knowing of the mandate, they confer it upon another, they are compelled to receive the first person and provide for him from the revenues of the church in place of a benefice until he has a prebend.

The same, to the Bishop of Vercelli.

The beloved son G., a cleric, *for whose reception as a canon in the church of Novara we had written, who did not obtain through our letters what he intended, against its canons,* explained to us by complaint that, when we had sent an apostolic mandate on his behalf to the chapter of Novara that they receive him as a canon and brother, conferring upon him a prebend if any *nevertheless* was then vacant, *they not only were*

unwilling to fulfill the apostolic mandate but even presumed to assign to another the vacant prebend that we commanded to be conferred upon him. Hence he petitioned us that we deign to execute what we had begun concerning him. But Master Gregory, proctor of the church of Novara, proposed in opposition that, since no prebend was vacant in that church, the aforesaid cleric, coming to the Apostolic See, falsely suggested to us that a prebend was vacant in that church and had procured letters concerning his reception upon a false suggestion. Hence, since a mendacious petitioner ought wholly to lack the things obtained, the same proctor petitioned that the church be absolved from his suit. Therefore, since they litigated longer concerning these things before our beloved son G., cardinal deacon of Saint George at the Golden Veil, whom we gave them as auditor, and the same cardinal diligently reported to us the things that had been proposed before him, through apostolic writings we command your fraternity that, if it is established for you that a prebend was vacant in the church of Novara at the time when the canons of that church received our letters *concerning a prebend,* since they thought that it should be conferred *wholly* upon another in elusion of our mandate, you cause the same cleric, if he does not have a sufficient ecclesiastical benefice *elsewhere,* to be received as a canon by the aforesaid clerics *according to the tenor of our former mandate,* and *competent* revenues from *that* church to be assigned to him each year until he has been provided with a prebendal benefice.

Chapter XXVIII

Latin source headnote: One having a personate or a benefice with cure, if he receives a second such benefice, vacates the first; but if he contends to retain it, he will also be deprived of the second. This first. And the one to whom collation of the benefice with cure pertains lawfully confers it immediately when the person instituted receives another; and, if he does not confer it within six months, the collation devolves upon another, and it is otherwise set forth. This second. But concerning eminent and learned persons, the Pope alone dispenses regarding plurality of incompatible benefices. This third. This is what this useful and famous chapter says.

The same, in a general council.

With great providence it was forbidden in the Lateran Council that anyone receive diverse ecclesiastical dignities or several parish churches contrary to the statutes of the sacred canons; otherwise [*both*] the recipient would lose what was so received, and the one conferring would be deprived of the power of bestowing. But because, on account of presumptions and the cupidities of certain men, no fruit or a rare one has hitherto come from the aforesaid statute, we, desiring to oppose this more clearly and expressly, establish by the present decree that whoever receives some benefice having the cure of souls annexed, if he previously had such a benefice, is by the law itself deprived of it; and if perhaps he contends to retain it, let him also be despoiled of the other. Let the one to whom the donation of the first pertains freely confer it, after reception of the other, upon one to whom he sees it ought deservedly to be conferred; and if he delays beyond six months in conferring it, not only shall its collation devolve upon others according to the statute of the Lateran Council, but he shall also be compelled to assign from his own revenues, for the utility of the church whose benefice it is, as much as it is established was received *from it* from the time of its vacancy. We decree that this same thing is to be observed in personates, adding that no one presume to have several dignities or personates in the same church, even if they do not have the cure of souls. Nevertheless, concerning eminent and learned persons who are to be honored with greater benefices, when reason has demanded it, dispensation can be made through the Apostolic See.

Chapter XXIX

Latin source headnote: A provincial council suspends from collation of benefices those who, after a second correction, confer benefices upon unworthy persons; it also provides who meanwhile is to confer the benefices, and that suspension is relaxed by the Pope alone or the patriarch alone.

The same, in the same council.

It is exceedingly grave and absurd that certain prelates of churches, although they can promote suitable men to ecclesiastical benefices, do not fear to assume unworthy men, whom neither honorable conduct nor knowledge of letters supports, following the affection of carnality, not the judgment of reason; no one of sound mind is ignorant how great are the losses that come to churches from this. Wishing, therefore, to remedy this disease, we command that, unworthy men having been passed over, they assume suitable men who wish and are able to render pleasing service to God and the churches; and let diligent inquiry concerning this be made annually in the provincial council, so that one who after the first and second correction is found culpable be suspended from conferring benefices by that council, a provident and honorable person being appointed in the same council to supply the defect of the suspended person in conferring benefices. And let this same thing be observed concerning chapters that have offended in these matters. But the offense of a metropolitan is to be left to the judgment of a superior and announced on behalf of the council. But so that this salutary provision may obtain fuller effect, let a sentence of suspension of this kind in no way be relaxed apart from the authority of the Roman Pontiff or of his own patriarch, so that in this matter also the four patriarchal sees may be specially honored.

Chapter XXX

Latin source headnote: A rector of a church, notwithstanding a custom of the bishop or patron, ought to have a sufficient portion from the revenues of the church. This it says as far as § *Who, however.* (*Who, however, etc.*:) A rector not residing in a parish church is deprived of it unless it is annexed to a dignity or prebend, in which case he ought to have a perpetual vicar there. And at the end it forbids, to the prejudice of rectors, a pension from its revenues to be given as a benefice. This it says. Or thus: one not residing in a parish church, or not appointing a vicar when it is annexed to a greater benefice, is deprived of it. This it says.

The same, in the same council.

A vice of custom that is to be extirpated has grown strong in certain regions: namely, that the patrons of parish churches and certain other persons, claiming for themselves [*almost*] wholly their revenues, leave to the presbyters assigned to their service so meager a portion that they cannot fittingly be sustained from it. For, as we have learned for certain, in some regions parish presbyters obtain for their sustenance only a quarter of a quarter, that is, a sixteenth of the tithes. Hence it happens that in these regions almost no parish priest is found who has any, even slight, learning in letters. Therefore, since the mouth of the ox that treads the grain ought not to be bound, but one who serves the altar ought to live from the altar, we establish that, notwithstanding any custom of the bishop, patron, or any other person, a sufficient portion be assigned to the presbyters themselves. But let one who has a parish church serve it not through a vicar but by himself in the order that the care of that church requires, unless perhaps the parish church is annexed to a dignity or prebend. In this case we grant that *the one* who has such a prebend or dignity, since he must serve in the greater church, have in the

parish church itself a suitable and perpetual vicar canonically instituted who, as has been said, has a fitting portion from the revenues of that church; otherwise, let him know that by authority of this decree he is deprived of it, freely to be conferred upon another who wishes and is able to fulfill what has been said. But we wholly forbid that anyone presume fraudulently to confer upon another as though for a benefice a pension from the revenues of a church that ought to have the cure of its own priest.

Chapter XXXI

Latin source headnote: Religious ought not to receive churches or tithes from laypersons without the consent of the diocesans, admit excommunicated or interdicted persons to divine offices, or institute or remove in churches that do not pertain to them by full right; rather, they will present suitable men to the diocesans for them.

The same, in the same council.

It is known to have been forbidden in the Lateran Council that any regulars presume to receive churches or tithes from the hand of a layperson without the consent of the bishops, or admit excommunicated persons or those interdicted by name in any way to divine offices. But we, forbidding it more strongly, have taken care to punish transgressors by worthy chastisement, establishing nevertheless that, in churches that do not pertain to them by full right, according to the statutes of the same council they present to the bishops the presbyters to be instituted, so that they answer to the bishops for the care of the people but render a competent account to the religious themselves for temporal property; but let them not dare to remove those instituted without consulting the bishops. Indeed, we add that they take care to present those whom either their manner of life renders known or credible testimony of prelates commends.

Chapter XXXII

Latin source headnote: One absent in the study of theology receives the fruits of his benefices in his absence, but not the daily distributions.

Honorius III, to the Abbot and Prior of Saint Geneviève.

Although we directed our writings to you that you cause the ecclesiastical revenues of *the beloved son* Master N., Archdeacon of York, who desires to study sacred scripture, to be ministered to him in full, nevertheless we do not wish, *nor was it our intention,* that you cause to be given to him *those* daily distributions that are furnished only to those residing in the churches and those who are present at the canonical hours.

Chapter XXXIII

Latin source headnote: Because of the poverty of the prebends of a cathedral church, chapels can be annexed to them, with a fitting portion reserved for their presbyters.

The same, to the Bishop of Veszprém.

You explained to us, *while established in our presence,* that the canons of your church, their provision having been diminished from the time of the general council, since from that time chapels have not been granted to them for their sustenance as was accustomed to be done before, cannot be sustained

from the revenues of their prebends, *since these are exceedingly meager, on account of which several of them, after leaving the same church, are compelled, to the reproach of its clerical body, to bind themselves to the services of others. Hence you humbly supplicated that by our permission it be lawful for you to enlarge their provision from those chapels. But because through this derogation would be made from the statutes of the same council, which we wish to be observed unshaken, we were unable to hear you in this respect. Nevertheless, suffering with paternal affection for their poverty and desiring also to do you a favor as the merit of your devotion demands, by authority of the present letters we commit to your fraternity, in which we have full confidence, that,* if manifest necessity or utility demands, you can increase the prebends of your church by chapels to be annexed to them in perpetuity, as with prior discretion you shall see to be expedient, with a fitting portion nevertheless reserved for the presbyters of *each* chapel. [*Let no one therefore, etc. Given at the Lateran, on the fourth day before the Kalends of February, 1225.*]

Chapter XXXIV

Latin source headnote: Although a church confers a benefice by donation of a layperson, the procurement of that benefice holds even when no mention of this was made.

The same, to the Bishop, Prior, and Archdeacon of Hereford.

The beloved son G., a *poor* cleric, proposed to us that, when we directed requests and commands to the dean and chapter *of the Church of Saint Martin* of Angers that they receive him as a canon and brother as soon as the opportunity offered itself, with you given to him as executors concerning this, *two prebends meanwhile having become vacant in the aforesaid church, the said cleric insistently petitioned you to execute our mandate concerning him. But* because the proctor of *the same* dean and chapter proposed by way of exception that *our* letters *concerning this* were not valid because no mention was made in them that the aforesaid dean had the collation of the prebends of that church by donation of the king, you said by interlocutory decision that you were not executors of our mandate, and thus *those* two prebends that became vacant in the meantime were conferred upon others, *and the said cleric, on account of an occasion of this kind that you seem to have received maliciously, has remained until now frustrated of his provision, on account of which he appealed to our hearing, and you are said to have deferred to his appeal. Therefore, being unwilling that the often-mentioned cleric, frustrated by you of the benefit of our letters, be further suspended, we firmly* command you that, notwithstanding an occasion of this kind, which we regard as frivolous, you take care to execute our mandate *directed to you on his behalf in such a way, without any difficulty, that because of this he does not have recourse to us further and you cannot be reproved for disobedience, which is compared to idolatry.*

Chapter XXXV

Latin source headnote: Children and those otherwise beneficed are not suitable to obtain benefices. This it says, adhering to the words of the letter.

Gregory IX, to the Bishop of Strasbourg.

Concerning disordered ordination—(*And below:*) But since those are to be reputed suitable in churches who can and wish to serve in them, we answer your consultation thus: that children and beneficed persons who cannot serve in the same church ought not to be reputed suitable in it.

Chapter XXXVI

Latin source headnote: Another prebend ought not to be divided for the completion of one prebend.

The same, to the Archbishop and Master R. of Tours.

Since we thought that the cause being conducted between the Bishop of Orléans and I. de Blesis, canon of Holy Cross, concerning the completion of the prebend of that canon should be committed to you—(*And below:*) We answer your consultation thus: that it was not our intention that for the completion of the prebend of the aforesaid canon some prebend should be newly divided.

Chapter XXXVII

Latin source headnote: Clerics who are not noble and not of eminent learning ought not for this reason to be repelled from prebends, even in a church that has not been accustomed to admit such persons.

The same.

Our venerable brother the Bishop of Porto supplicated that, since, while he discharged the office of legation in those regions, he conferred upon I., a cleric, a certain prebend that had been vacant in the church of Strasbourg for so long that its donation had devolved upon the Apostolic See, we should pursue his collation with benign affection. But the proctor of the chapter of Strasbourg proposed in opposition that the same chapter, having heard this and alleging an ancient custom inviolably observed, according to which they had until now admitted into their fellowship no one unless noble and free, illustrious from each parent, of honorable manner of life, and of eminent learning, appealed to the Apostolic See before it received monitory or executory letters, lest anything be done contrary to this, especially since no prebend was then vacant. (*And below:*) We therefore, considering that not nobility of lineage but of virtues and honorable conduct of life make a servant pleasing and suitable to God, for the governance of which he chose not many noble and powerful according to the flesh but ignoble and poor persons, because with him there is no acceptance of persons, and since men of eminent learning can scarcely be found for the summits of dignities, much less for prebends, have not thought that exceptions of this kind should be admitted. (*And below:*) We command your discretion that, if it is established for you that the aforesaid prebend was vacant when the aforesaid bishop conferred it upon the said I., you cause him to be received to it.

Chapter XXXVIII

Latin source headnote: If it is commanded that provision be made in a church, provision cannot be made by means of a church.

The same.

Since formerly we gave a mandate to the prior of Saint M. that by apostolic authority he provide for G., a deacon, in some church of the city or diocese of Lucca, the same prior, by authority of this kind, endeavored to designate the aforesaid G. rector of the Church of Saint Peter of Vico, in which the rector has been accustomed to be elected by the clerics of the same church, pronouncing nevertheless a sentence of excommunication against those resisting. Therefore, since a mandate of this kind does not extend to such things, nor is our intention directed to a rectorship or dignity, since our command

proceeds for a simple benefice, we command that you declare that both an institution of this kind and the sentence of excommunication pronounced because of it do not hold.

Title VI: On a Sick or Debilitated Cleric

Chapter I

Latin source headnote: A sick cleric receives the fruits of his benefice in full.

Gregory, to Candidus, Bishop of Orvieto.

Since, when there is bodily affliction, [*whether it happens for purgation or for vengeance, God's judgment in this is unknown, affliction ought not to be added by us to those scourged, lest, which may it not be, the offense of guilt regard us. And because Calumniosus, bearer of the present letters, asserts that on account of this affliction that he sustains the customary advantages are denied him by your church, therefore*] we exhort your fraternity *by the present letters* that his sickness ought not to impede the bearer of the present letters from receiving the *benefits* that are customary from your church; because, if others were deterred by his example, perhaps no one could be found who would serve the church. Rather, according to the order of *his place,* let your fraternity, *in contemplation of divine judgment,* furnish to the sick man, from the very small means that can come to the church, whatever could be ministered to him if he were healthy, [*so that, etc.*]

Chapter II

Latin source headnote: A presbyter from whom half the palm with two fingers has been cut off does not celebrate Mass, but he can perform the other priestly functions.

Pope Eugenius.

We do not permit the presbyter whose two fingers together with half his palm you signified *to have been* cut off by a robber to celebrate Mass, because we trust that this cannot be done safely because of the debility or without scandal because of the deformity of the member. But we in no way forbid him to perform the other priestly offices. [*Furthermore, etc.* (*Cf. c. 1, On Apostasy, V. 9.*)]

Chapter III

Latin source headnote: If the rector of a church is leprous, a coadjutor is to be given to him.

Lucius III.

Concerning rectors of churches infected with the mark of leprosy to such a degree that they cannot serve at the altar or enter churches without great scandal to those who are healthy, we wish you to hold this: that a coadjutor is to be given to them who has the care of souls and receives from the resources of the church a fitting portion for his own sustenance.

Chapter IV

Latin source headnote: If the rector of a church is leprous, he is removed from the office of administration, but is sustained from the goods of the church.

Clement III.

Your fraternity has thought fit to consult us—(*And below:* [*Cf. c. 19, On the Sentence of Excommunication, V. 39.*]) But concerning a priest who, struck by divine judgment with the disease of leprosy, performs the office of prelacy in a parish church, we say that, because of the scandal and abhorrence of the people, he ought to be removed from the office of administration, in such a way *indeed* that necessities are ministered to him for as long as he lives according to the resources of the church.

Chapter V

Latin source headnote: A coadjutor is to be given to a bishop who, because of an incurable illness, cannot exercise the pastoral office.

Innocent III, to the Archbishop of Arles.

It was proposed *before us* on your behalf that, since *our venerable brother* the Bishop of Orange has labored under a grave and incurable illness for almost *four years already,* so that he *has not been able and* is in no way able to exercise the pastoral office, *the noble man the lord of Baux,* the *consuls,* and the citizens of the same city incessantly petition you, since you are their metropolitan, that you take care to provide *both* for *them and for the Church of Orange.* But since *you* neither can nor ought in any way to compel him to resignation, nor ought affliction to be added to affliction, but rather *one ought* to pity his misery, because the same man has been good *and honorable* and governed the church committed to him in a salutary manner, *you have thought that the Apostolic See should be consulted as to what you ought to do concerning these things.* We, *therefore,* wishing to provide salutarily both for the *aforesaid* bishop and for *his* church, *answer your fraternity thus and through apostolic writings* command that you associate with him as coadjutor a provident and honorable man through whom both the bishop and the people *committed to him* may be usefully counseled. [*Given at Rome, at Saint Peter's, on the fourth day before the Nones of December, in the seventh year of our pontificate, 1204.*]

Chapter VI

Honorius III, to the Bishop of Aversa.

To the consultations—(*And below:*) But a coadjutor is deservedly to be assigned to the archdeacon who, you assert, laboring under paralytic disease, has lost the office of the tongue, *especially if this proceeds from his own will.*

Title VII: On Institutions

Chapter I

Latin source headnote: The number of clerics ought to be established in collegiate churches according to their resources.

From the Council of Arles.

Let no more be received into a monastery of monks or clerics, or even of girls, than can maintain themselves from the goods of the church without impoverishment of the church.

Chapter II

Latin source headnote: Laypersons cannot be instituted as canons.

Eugenius.

As has become known to us, you have taken care jointly to establish a certain number of canons in your church *and to fortify your institution by the binding force of an oath. Hence, because, with that number diminished in the course of time, you call into doubt whether you can fill that number by the institution of canons, counting the laypersons who are named by the title of canons in your church, and whether the established number is filled, so that this ambiguity may be removed from your hearts, it seems to us that,* since laypersons ought not to be counted among the number of canons, you ought not to delay to fill the established number, *confirmed by an oath taken,* with other suitable clerical persons *as canons. For your intention is not thought to have been other than that* you unanimously take care to find such persons to fill the number *when it should be necessary,* through whom God may fittingly be served in divine offices through ecclesiastical orders. *Furthermore, we more strictly forbid you henceforth to admit laypersons as canons.*

Chapter III

Latin source headnote: The institution of benefices pertains to bishops or their officials.

Alexander III, to the Archbishop of Canterbury and his Suffragans.

From the frequent complaints *of persons,* we have learned quite manifestly that in your regions an exceedingly depraved *and enormous custom, contrary in every way to the constitutions of the holy Fathers,* has grown strong for many past times: namely, that clerics, *led by blind cupidity, receive churches and* ecclesiastical benefices without the consent of the bishop of the diocese or of his officials who can do *this* by law, thinking less *solicitously* than is fitting how alien this is from the statutes of the holy Fathers and contrary to ecclesiastical honorable conduct. Hence, since you, brother archbishop, wish, as you ought, by the office committed to you, to root out so iniquitous a custom from your province, you pronounced a sentence of excommunication both against those *clerics* who knowingly retain *churches or* ecclesiastical benefices *henceforth* occupied in such a way, and against those who should henceforth presume to occupy *churches or ecclesiastical benefices in such a way, as we understood from your letters.* We therefore, holding that sentence ratified *and firm* and confirming it by apostolic authority, *through apostolic writings and by way of precept* command that *each of you, renewing the sentence in his episcopate at least four times a year, cause it to be inviolably observed, contradiction and appeal ceasing,* and that you in no way presume to absolve the clerics themselves who *have incurred or henceforth* incur that sentence unless they have made fitting satisfaction *and wholly desisted from their presumption.*

Chapter IV

Latin source headnote: No one ought to be instituted beyond the resources of a church against the will of its clerics.

Clement III, to the Clergy of Constantinople.

By the authority of the Apostolic See *and the duty of our office, we are compelled to regard ecclesiastical men with a more benign eye and to provide for them with pastoral solicitude, lest they be burdened by molestations. Therefore, induced by this reason, we forbid by apostolic authority that any of you be proceeded against by anyone in a civil or criminal business except in an ecclesiastical forum, or be in any way committed to prison or bonds through a secular person unless he has been cast out of clerical order by his archbishop, or without a reasonable and manifest cause suffer a burden from anyone in his office or his right. We also forbid the king's vicar or any person exercising the place of secular power to presume to inflict injury upon you in your houses or other property; rather, both in these*

and in other things we wish the privileges granted to you by kings or archbishops upon pious consideration to be preserved inviolate. We establish further that no one be instituted in your churches against your will beyond what their resources can sustain.

Chapter V

Latin source headnote: When outsiders must be instituted in churches, clerics of only a certain origin ought not to be instituted, but from wherever they may be, provided that they are suitable.

Innocent III, to the Cardinals of Saint Marcellus and Saint Susanna, Legates of the Apostolic See.

It is known to pertain to the adornment *and advantage both of the Church of Hagia Sophia and of the other churches constructed in the city of Constantinople that learned men conspicuous for honorable conduct, coming from any parts of the world, ought to be instituted in them. But,* as has been suggested to our ears, *our venerable brother* the Patriarch of Constantinople, *unmindful of those things that we suggested to him by living voice and afterward commanded through writings, if nevertheless our letters reached him,* scorning clerics of other nations, strives to place only Venetians in the churches of Constantinople, not considering that in every nation one who does justice is acceptable to God, nor is it fitting that the sanctuary of God be possessed by hereditary right. Wherefore, through apostolic writings [*by way of precept*] we command your discretion that you admonish him not to postpone instituting in the aforesaid churches, and especially in the greater church, men who are *religious, honorable, and* learned, and otherwise suitable, from wherever they derive their origin; otherwise he will render himself unworthy for you to compel clerics of other nations to his obedience, *especially since because of this they have thought that they should appeal to our hearing*. Nor can you dissemble from intimating this to our ears, so that from this very thing we may be able to conjecture whether what he is said to have promised the Venetians concerning this is true. *But if any clerics have been instituted by you or one of you in the aforesaid churches, cause them, with appeal set aside, to enjoy peaceful possession, and cause those removed to be restored to the same churches, as shall be just, by ecclesiastical censure, with appeal removed.* [*But if not. Given, etc., at Ferentino, on the eleventh day before the Kalends of July, in the ninth year, 1206*.]

Chapter VI

Latin source headnote: Institutions and custodianships can by special right pertain to one who is not the bishop, and while litigation with the diocesan is pending he is defended in possession. This it says. Or thus: if one to whom it does not pertain by common law possesses the right of instituting, while judgment concerning ownership is pending he is defended in possession.

The same, to the Bishop of Ely and the Archdeacon of Norwich.

When *the beloved sons Master Honorius,* Archdeacon of Richmond, and *Master Columbus our subdeacon, I. of York, R. Avenel, and* the proctors of *our venerable brother* the Archbishop of York came to the Apostolic See, *we thought that they should be heard in our consistory.* On behalf of the *aforesaid* archbishop it was proposed that the institution of persons and custody of vacant churches pertain to him in his diocese both by common law and by general custom. But certain of his predecessors personally committed both institution and custody to certain archdeacons of Richmond, *retaining them to themselves at the time of someone and freely using them, as pertained to them, in such a way that the archbishop who now presides over the church of York granted them by special grace to W. de Chimili, formerly Archdeacon of Richmond, at the requests of*

Richard, King of the English of illustrious memory, and, when he was afterward elected bishop, retained them for himself as his own. [*And when he intended to assign that archdeaconry to the aforesaid master, both before its grant and in the grant itself he expressed that he reserved to himself both the institutions and custodianships. The archdeacon himself answered him that he would act against God and derogate from canonical law if he presumed to usurp for himself the institutions of churches, which belonged to the archbishop alone. Then, renouncing those liberties, he reduced his renunciation to writing and, for greater caution, fortified it with his own seal, and finally took a bodily oath that he would in no way involve himself in them.*] But among other things the archdeacon himself answered that, *when Henry I, King of England of illustrious memory, wished a new episcopal see to be created at Carlisle, because the Archdeaconry of Richmond was harmed by this, the king himself humbly petitioned T., Archbishop of York of good memory, that, in compensation for a certain part that was withdrawn from the aforesaid archdeaconry, he grant it the aforesaid dignities; and the archbishop, assenting to the requests of the petitioner,* gave both the institutions and custodianships, not personally to the archdeacon who then existed, but perpetually to the archdeaconry, by a real *and free* grant with the consent of the *York* chapter. But since the archdeaconry itself had existed in continuous possession both of these and also of other liberties in the times of many archbishops, *kings,* and archdeacons, and the *often-mentioned* archbishop had granted it to him without any condition, after the grant he asserted that he had granted it *with all its liberties* except the institutions and custodianships of vacant churches. But he, [*fully knowing the custom of the same archbishop, namely that, just as he would give easily, so he was accustomed lightly to repent, and*] fearing that, if he expressly denied this, since he had not yet obtained possession as archdeacon, the archbishop would either wholly impede his act or it would be delayed longer, answered that he would do what pleased him not only concerning that but concerning all his revenues. [*But afterward, having entered possession of the archdeaconry, he freely used those liberties as his predecessors had been accustomed to do. Subsequently, when the archbishop had despoiled him of the archdeaconry itself contrary to justice and he could in no way obtain its restitution unless by charter he renounced the aforesaid liberties, he, knowing that his right endured, while still despoiled gave the archbishop himself letters of renunciation fortified with his own seal; but, as was proposed in opposition, he in no way abjured them. Indeed, after obtaining the benefit of restitution, he used the same liberties as before, although the same archbishop manifoldly burdened him and his clerics concerning them and other things after an appeal had been lawfully interposed. Hence, since the grant of the aforesaid liberties was not made to the person but rather as a real grant to the personate, they were not specially granted to anyone by grace but were rather delivered as owed together with the archdeaconry, to whose integrity they undoubtedly pertained as compensation by way of dowry. On this account, even if some archbishop perhaps used them while he retained the archdeaconry in his hands, no prejudice was generated thereby against the archdeaconry, since they are understood afterward to have been granted in it. Furthermore, since in the Council of Tours divisions of prebends, dignities, and benefices are forbidden, and the Lateran Council, where it forbids new assessments to be imposed and adds that old ones are not to be increased, says, "Let no persons presume to appropriate a portion of the revenues for their own uses," it is apparent that the archbishop neither ought nor was able to mutilate the archdeaconry of its dignities and liberties. Nor is it to be believed that, before the grant or in the grant itself, it was arranged that the archbishop should retain the aforesaid liberties for himself, because, if he had perhaps wished thus to usurp another's property for himself, he would seem to have committed simoniacal depravity. But the renunciation could not harm the archdeacon, since he renounced while despoiled, and Pope Alexander of good memory, our predecessor, asserted that a renunciation of this kind was not valid. Moreover, although collation of the archdeaconry should have come by surreption to the aforesaid archbishop, its integrity nevertheless pertains to the dignity of the church of York, and neither archbishop nor archdeacon could, apart from the assent and without the*

counsel of the York chapter, harm to such an extent the dignities or liberties of the archdeaconry itself.] *Upon these matters the opposing party replied that, even if the renunciation or abjuration did not harm the archdeaconry, nevertheless by these the faculty of seeking recovery was taken away from the archdeacon. But the archdeacon answered that he was not seeking recovery of those liberties, since he freely used them, as before, when he began his journey to come to the Apostolic See and enjoyed possession of them. But against this they replied again that the same archdeacon would not have petitioned to be instituted by the archbishop in a certain church of his archdeaconry if such institution pertained to him and he then enjoyed possession of those liberties. To this the archdeacon himself answered that he petitioned not to be instituted by the archbishop but rather to be confirmed, although it seemed unfitting that he should institute himself.* We therefore, *having heard and more fully understood the things proposed on either side,* declared by interlocutory decision that the archdeacon is to be protected in full possession of the liberties of the same archdeaconry until it has lawfully been proved in opposition that those liberties were personally granted to the archdeacons by the archbishops, since in this case both before and after, and even in the grant itself, the archbishop could lawfully have retained them *for himself* as his own, or until it has lawfully been proved that the archdeacon abjured those liberties. But in this case, if that grant was real, no right or utility would accrue to the archbishop, because either at the petition of the church of York or by ourselves we shall make provision concerning this for the *same* archdeaconry. Therefore, if either of these has been lawfully [*both proposed and*] proved, let silence be imposed upon the archdeacon concerning those liberties; if neither, upon the archbishop. [*Therefore strictly, etc.*]

Chapter VII

Latin source headnote: He to whom the collation of dignities pertains cannot institute himself.

The same, to the Bishop of Troyes and the Archdeacon of Paris.

When it [*had formerly come to our hearing that a certain dignity in the church of Péronne, which is commonly called the custodianship, had remained vacant for two years and more contrary to the statutes of the Lateran Council, we recall that we gave in command to our venerable brother the Archbishop of Tours, then Archdeacon of Paris, and our beloved son the Dean of Saint-Quentin that, if the matter stood thus, since the donation of that dignity had devolved upon us, they, supported by our authority, should assume it into their custody and should disclose the truth to us by their letters, so that, made more certain by them, we might confer the dignity itself upon a suitable person. But they peremptorily cited both the dean and chapter and also Matthew, abbot of the church of Péronne, who also conducted himself as custodian of that same church. And when the said archbishop, because he could not be present on the appointed day, had excused himself by his letters, the proctor of the aforesaid abbot appeared before the said dean, proposing that our letters directed to them were suspect for many reasons: both because in their salutation the name of the archdeacon had been placed before that of the dean, and the small mark that is customarily appended for the identification of the person obtaining the letters had not been written on the back but rather in the margin of the letters; and because the capital letter S in this word "salutem" was extended too far lengthwise on its rear part; and because in the same letters an adversary, accuser, or even denouncer had not been designated by name—all of which he alleged to be contrary to the custom of the Apostolic See. The same proctor also, alleging that it was necessary to proceed in that business according to judicial order, insistently requested a delay so that the said abbot might be able to be present personally in the same cause, interposing the obstacle of an appeal if the requested delay were denied him. But the said dean, treating the aforesaid allegations with contempt as superfluous, wholly denied the delay and assumed the aforesaid custodianship into his care, appointing suitable providers both in external and internal matters. And so that he might make us more certain about the truth of the*

business, he compelled the dean and certain canons of the church of Péronne to bear witness to the truth concerning that business; he sent their depositions, enclosed under his own seal, to our presence. We therefore, reviewing more diligently the proceeding of that dean, although we regarded certain exceptions proposed by the proctor of the aforesaid abbot as frivolous and empty, nevertheless, because according to lawful enactments, even if not cognizance but execution is committed, it is still necessary to inquire into the truth of the petitions, especially since that clause, namely, "if the matter stands thus," had been inserted in our letters, thought that the proceeding of the same dean—who assumed the custodianship into his care before he inquired into the truth—should be annulled. By apostolic writings we command your discretion that you restore the abbot himself to the aforesaid custodianship, since it is established that he was removed contrary to the form of the apostolic mandate, and then take care to proceed according to the tenor of the same mandate, nevertheless attending to this: unless the said abbot shows a reasonable cause why he can have the custodianship and the abbacy together in the same church, you, after removing him, are to assume the often-mentioned custodianship into your care, the obstacle of appeal having been removed, and are to keep it until you fulfill the apostolic mandate concerning it.] But we do not wish you to be ignorant that, after *the same* M. was made abbot, he could not by law obtain *the aforesaid* custodianship, because, since by reason of the abbacy the donation both of the custodianship and of the other dignities, and also of the prebends in the church of Péronne, pertains to him, he could not receive the custodianship itself from himself, since there ought to be personal distinction between giver and receiver; nor could he receive it from another, since another did not have the right of conferring it. [*Given at Viterbo, on the twelfth day before the Kalends of July, in the tenth year.* 1207.]

Title VIII: On Granting a Prebend and a Church Not Vacant

Chapter I

Latin source headnote: One knowingly instituted into the benefice of a living person is to be deposed.

Pope Gelasius I, to the Romans.

Those who are placed in the position of living priests are by that very fact, *according to the canons,* to be driven from ecclesiastical communion, because they permitted themselves to be appointed as successors to living priests.

Chapter II

Latin source headnote: Benefices not vacant ought not to be granted or promised; and, when they become vacant, they ought to be granted within six months. When these have elapsed, collation devolves from the bishop to the chapter, and conversely, and finally to the next superior.

From the Lateran Council.

Let no ecclesiastical ministries, or even benefices or churches, be bestowed upon or promised to anyone before they become vacant, lest someone seem to desire the death of his neighbor, into whose position and benefice he believes that he will succeed. For since [*this*] is found to have been forbidden even in the laws of the gentiles, it is [*exceedingly*] shameful and full of the chastisement of divine judgment if expectation of a future succession should have a place in the church of God, when even the gentiles *themselves* took care to condemn it. But when ecclesiastical prebends or any offices in some church happen to become vacant, *or if they are even now vacant,* let them not long remain in

suspense, but within six months let them be conferred upon persons who are able worthily to administer them. But if the bishop, where it pertains to him, should delay conferring one, let it be ordered by the chapter. But if it pertains to the chapter and it has not done this within the prescribed term, let the bishop execute it according to God with the counsel of religious men. Or if perhaps all have neglected it, let the metropolitan dispose of them according to God without their contradiction. [*Furthermore, etc.* (*cf. c.* 4, *On Prebends, III.* 5.)]

Chapter III

Latin source headnote: Vacant benefices are conferred notwithstanding the appeal of those to whom they had been promised before they became vacant.

Alexander III, to the Archbishop of York.

It has been reported to our ears *that certain clerics, possessing revenues of one hundred or two hundred marks in ecclesiastical benefices and alleging that the first churches to become vacant had been promised to them by monks or canons or others having the right of patronage, issue the voice of appeal so that others may not be instituted in those churches when they become vacant, and so that meanwhile they may be able by some artifice to fulfill their purpose.* We answer your consultation in this manner: since promises made concerning churches not vacant were annulled in the Lateran Council, it ought not, under pretext of the appeal of those who rely upon *the aforesaid* promises, to be omitted that churches, when they become vacant, be ordered concerning suitable persons.

Chapter IV

Latin source headnote: If a rescript is written to him to whom collation pertains, with an executor appointed to provide, by presentation of the letters made to the collator the prebend is so affected that a collation made to another is not valid. This it says according to the true understanding. See chapter *If to the chapter,* under the same title in the Sixth.

Innocent III, to the Provost and Chapter of Cambrai.

T. the priest, *our beloved son,* proposed to us that, when Pope C. *of good memory,* our predecessor, *after the requests that he had extended to you* for receiving him as a brother and assigning to him the prebend next to become vacant in your church, which pertained to your donation, *had sent you an apostolic mandate,* with the Dean of Reims appointed executor, the dean himself, finding you contumacious *and rebellious in the execution of the apostolic mandate,* invested him by apostolic authority with the first prebend to become vacant in your church that pertained to the donation of the chapter, [*commanding you that, receiving him as a canon and brother, you confer upon him a stall in the choir and a place in the chapter; entrance into churches was interdicted to you if you delayed beyond three days to fulfill what he commanded. But you neither wished to execute his mandate nor refrained from entrance into churches; rather, in evasion of the apostolic mandate, you appealed to the same dean as a means of escape.*] But when *the dean himself, overtaken by death, could proceed no further in that business, and* the prebend that pertained to your donation became vacant in the church of Cambrai, you assigned it to another, [*promulgating a sentence of excommunication against that priest because he had retained the letters of the same dean as testimony for himself.*] But that same predecessor of ours, wishing what had been done by the same dean to be held valid, wholly annulled the collation of the prebend made by you and, [*after absolving the priest from the bond of excommunication,*] invested him with it *by his own hand* through a ring. Although it is not our intention to hold valid

investitures made concerning things to become vacant contrary to the statutes of the canons—we who, according to the plenitude of power, can by law dispense above the law—nevertheless, attending that the same priest was invested by our predecessor not with a thing to become vacant but with a vacant thing, inasmuch as it was understood to be vacant after the annulment of the grant made by you, *by apostolic writings we command* your discretion *and order* that, removing any holder from that prebend, you confer it upon *T., every delay, excuse, and appeal being set aside, and permit it to be possessed peacefully by him; and assign to him a stall in the choir and a place in the chapter* with the fullness of canonical honor. [*Otherwise, etc. Given at Rome at Saint Peter's.* 1198.]

Chapter V

Latin source headnote: The six-month period fixed by law for electing or conferring does not run against one lawfully impeded, nor does it begin to run except from the day of knowledge of the vacancy. This it says, and the text is very frequently alleged and of daily application.

The same, to P., Cardinal Deacon of Saint Mary in Via Lata, Legate of the Apostolic See.

Because diversity of minds often follows diversity of bodies, *lest the plenitude of ecclesiastical jurisdiction, distributed among many, grow cheap, but rather, conferred upon one, remain vigorous, the Lord conferred upon the Apostolic See in blessed Peter the mastership and primacy of all churches and of all the faithful of Christ. Retaining for itself the plenitude of power, for the more praiseworthy fulfillment of the pastoral office that made it a debtor to all, it called many into a share of its solicitude, so distributing its burden and honor to others that it subtracted nothing from its own right nor diminished its jurisdiction in anything. But since, by the office of the authority it has received, it neither can nor ought, as the mother of individuals, to deny justice to individuals justly petitioning, since justice and judgment are the preparation of its seat, we, who, although insufficient, have been assumed to its governance, cannot fail to assist our brothers and fellow bishops crying out to us in justice, or fail to hear what they have justly requested, lest, if perhaps we should be found remiss in exhibiting justice to them, they too should be found negligent in rendering the rights of their subjects, and should execute less praiseworthily the part of our solicitude committed* [*to them*] *if—which may it not be—they see us either turn aside from right or fail to hear those petitioning for justice. Therefore, diligently moved by this reason, we benignly received at the Apostolic See our venerable brother* [*G.,*] *the Archbishop of York, who came there, and took care to hear his manifold complaints.* Among other things the Archbishop of York complained [*that,*] since the collation of prebends in the church of York and *in* his other churches pertains to him, during the time of his suspension and afterward certain persons intruded themselves into them apart from his authority, *and in this and other matters derogated not a little from his right. Certain persons also had crept into certain abbeys of the diocese of York after an appeal had been interposed to us, and had requested from him neither the gift of confirmation nor the grace of benediction. Wishing, therefore, that provision be made for the same archbishop through the industry of your solicitude, by the counsel of our brothers, by apostolic writings we* [*strictly*] *command*—we command you that, after previous admonition, you induce those who accepted prebends or dignities of the church of York or of other *churches* pertaining to his donation apart from his authority to resign them, *since they cannot retain them with a safe conscience. But if perhaps they should be unwilling to acquiesce in your admonitions, compel them to this,* through a sentence of excommunication and the withdrawal of their other benefices, *notwithstanding a confirmation obtained from the Apostolic See under the common form, which confirms benefices and prebends as they are justly and peacefully possessed, appeal being removed,* unless perhaps some obtained them either *by* a special mandate of the Apostolic See or by authority of the Lateran Council from the York chapter. Yet let the time of suspension in no way be computed within the six

months, since that constitution of the Lateran Council was promulgated only against the negligent *and slothful,* and then, even if the archbishop himself wished, he was nevertheless unable to use his own power in conferring prebends. And although he was suspended from that power by his own fault, the donation of prebends did not by reason of that fault devolve upon the chapter itself, but during the time of his suspension the donation of prebends pertained to him who, apart from his sloth and negligence, could donate the prebends. Nor is the time during which he journeyed to the Apostolic See, remained there, or departed from it in any way to be computed within the six months. Moreover, we wish the six-month period to be computed not from the time of vacancy of the prebends, but rather from the knowledge of the *archbishop himself and from the admonition made to his person by the chapter, since mention is made in the privilege that the same chapter is said to have obtained from our predecessor of a canonical admonition to be sent beforehand. But we regard as altogether frivolous the claim, if perhaps some say that they obtained certain of those prebends by royal donation, as if the royal highness could by its own authority confer those prebends during the archbishop's suspension. But canonically punish the aforesaid abbots if, after an appeal* [*to us*] *was lawfully interposed, they received the benefit of confirmation and benediction, lest by their example others assume the haughtiness of pride against their prelates.* [*Given on the fourth day before the Kalends of May.* 1199.]

Chapter VI

Latin source headnote: Letters obtained for a benefice are not valid when they make no mention of another's colorable possession in fact. This it says according to the true and common understanding; the text is very frequently alleged, has matter of daily application, and was a very subtle decision.

The same, to the Bishop of Basel and the Abbot of Saint Mary.

When it was formerly intimated to our ears that the provostship of the church of Lausanne had been vacant for so long that, according to the statutes of the Lateran Council, its donation had devolved upon us, *we, wishing to exhibit a special grace to our venerable brother* the bishop and *our beloved sons* the canons of Lausanne, *and thereby to acquire merit for them from ourselves, commanded them by writings* that they confer that provostship, *without any difficulty,* upon *our beloved son B., our subdeacon,* the treasurer of Lausanne, certain executors being appointed concerning this; *and that, when he had been assumed by them as provost, they assign the treasury of that church, whose assignment was alleged to pertain by law to the same bishop and canons, to a suitable person. But lest the benefit of apostolic provision should remain in any respect imperfect, we commanded our beloved sons the Abbots of Hauterive and Fontaine-André and the Prior of Val-de-Travers that, if the aforesaid bishop and canons neglected to fulfill our mandate, they themselves, every obstacle of contradiction and appeal being removed, should not delay to execute it if they relied upon the truth of the premise, restraining by ecclesiastical censure, appeal being removed, those who rashly chose to oppose our mandate.* But the aforesaid bishop and canons, upon receiving *our* letters, said that the aforesaid provostship was not vacant, because, although the man who had been provost had been assumed as bishop, he had nevertheless, after his consecration, again been elected by the canons themselves to that provostship and possessed it as before. The *aforesaid* executors, saying that this was contrary to law *unless it had been specially granted to them by the Apostolic See,* therefore assigned the provostship itself, vacant by law, to the aforesaid treasurer, by the apostolic authority *with which they appeared to be supported,* to be corporeally possessed, *interdicting entrance into the church to the canons themselves unless within eight days they humbly obeyed him as their provost.* (*And below:*) *When the aforesaid and other things had been related in his presence by the messenger of our said subdeacon, the messenger of the opposing party proposed that, after his lord the*

Bishop of Sion, who had been Provost of Lausanne, was consecrated bishop, the Lausanne chapter again conferred and granted that provostship upon him to have, attending in this to the utility and necessity of their church and also to ancient custom. The Bishop of Lausanne, seeing that he was exceedingly useful and necessary to his church, approved what had been done concerning this by his canons, and honor was rendered to him as provost by the canons and even by the treasurer himself. But afterward the aforesaid treasurer, approaching the Roman Church and suppressing everything that had been done both by the bishop and by the said canons, suggested to us that the provostship was vacant. Therefore he obtained from us letters concerning its assignment to him; the messenger alleged on many grounds that they had been obtained through suppression of the truth and suggestion of falsehood, alleging on behalf of his lord of Sion the utility, custom, and necessity that the aforesaid treasurer had suppressed. (And below:) Conversely, the messenger of the opposing party alleged, and endeavored by many reasons to show, that the provostship was vacant and had, while vacant, been granted to the treasurer of Lausanne by authority of the superior to whom its donation had devolved according to the statutes of the Lateran Council. He also endeavored by manifold reasoning to show further that the said Bishop of Sion could in no way have been elected after his consecration to the provostship of Lausanne, from which he had been assumed to the governance of the episcopate, since the statutes of the sacred canons opposed him concerning this. He also said that the provostship was vacant for another reason: those whose donation it was presumed, after he had been assumed as bishop, to grant it to him, since according to the statutes of the aforesaid council both he who received what he accepted contrary to the sacred canons ought to lose it, and he who gave it ought to be deprived of the power of granting. He also showed by many assertions that the utility, custom, and necessity that his messenger had alleged in support of the cause of the Bishop of Sion in no way aided him, since these appeared rather to be begged supports than true supports for his cause. Hence the messenger himself petitioned that we deign to confirm by apostolic authority what had been done by the aforesaid judges and to remove the Bishop of Sion from the provostship itself. Therefore, an auditor appointed by us concerning this decreed by our mandate that what had been done by the aforesaid executors under color of our letters be held null and void, *namely* because they had been obtained by suggestion of falsehood and suppression of the truth, since that provostship was not vacant in fact, because such possession has more of fact than of law. But we, holding valid the sentence of the same *cardinal, by apostolic writings command you* that, unless the aforesaid *Bishop of Sion* sufficiently shows that the aforesaid provostship was granted to him after his consecration either by a special indulgence of the Apostolic See or for another just and necessary cause, you compel him to resign it, if he should be unwilling to do so voluntarily, *by ecclesiastical censure, appeal being removed, and* thereafter take care diligently *to admonish* and induce the Lausanne chapter on our behalf to confer it upon the aforesaid treasurer.

Chapter VII

Latin source headnote: Where it is established that a benefice was conferred by one having power, possession ought not to be delayed by an exception of abjuration and renunciation.

The same, to the Archdeacon of Richmond.

After the election and confirmation of *our venerable brother* [*Eustace,*] Bishop of Ely, when the Archdeaconry of Richmond, which he had held, became vacant, the Archbishop of York granted it to you by his own liberality, giving a mandate to the York chapter *by his letters* that they take care to receive you as archdeacon, *as is customary.* They were unwilling to obey his mandate *for reasons of this kind,* because, among other things that Pope Celestine *of good memory,* our predecessor, is known to have granted to the dean and chapter of York by his privilege, he also decreed that the ordering of

canons or persons should be free, *as had been observed until then from the very foundation of the place,* namely, so that a suitable and honorable person upon whom the archbishop *himself* should determine to confer a vacant prebend or dignity in the church of York would, according to the ancient custom of that church, be presented to the aforesaid dean and chapter; [*and, received by the chapter as a canon through the book and bread, he ought to be invested in the chapter by the hand of the dean; afterward, received with the kiss of the brethren, he would interpose the customary and due oath concerning preserving fidelity to the church itself, defending its liberties and customs consonant with law to the best of his ability, and not disclosing the secrets of the chapter; and then, by the mandate of the dean and chapter, as is customary, he would be installed by the hand of the cantor;*] *and* if anyone were introduced into that church by someone contrary to this *ancient and approved* custom, he would be held neither as a person nor as a canon. But if the archbishop *should not confer a vacant prebend or personate in that church,* within the term of the Lateran Council and according to the prescribed form, *after a canonical admonition had been sent beforehand,* upon a suitable person, it would be lawful for the dean and chapter, by apostolic authority, *notwithstanding any contradiction or appeal,* to confer it according to the statutes of that council. Therefore, since no mention of the dean had been made in the archbishop's letters directed to the chapter, by whose hand you ought to have been invested in the chapter, his mandate *rightly* met contradiction, [*and also for this reason: when that same predecessor of ours took care to invest I. of Saint Lawrence with the chancellorship of York by his own hand through a ring, commanding his messenger to assign in his name a stall in the choir and a place in the chapter and procession, together with the entirety of the revenues and everything pertaining to the chancellorship, you, because you presumed to retain those proceeds in contempt of the apostolic mandate, were ensnared in the bond of excommunication by the dean and chapter of York; hence you were not in the meantime to be admitted to a dignity. Moreover, this reason opposed you: before receiving investiture from the chapter, you intruded yourself into the archidiaconal office. Hence, according to the tenor of the privilege, you ought not to be held as a person, especially since homicides, sacrileges, arsons, and many other grave and enormous acts were objected against you, which, while striving to usurp that archdeaconry for yourself by armed force, you did not fear to perpetrate.*] Therefore, when your institution had been rejected by the chapter for the foregoing *and other* reasons, they, *lest they sustain loss of their right,* understanding *also* that donation of *that* archdeaconry had devolved upon them both by authority of the Lateran Council and by the privilege granted to them, *having taken the counsel of prudent men,* unanimously conferred it upon *our beloved son* R. of Saint Edmund, investing him with it, *as is customary,* and solemnly installing him. But in the course of time, after the aforesaid archbishop *returned from the Apostolic See into Normandy,* and after the resignation and abjuration made by you and received by him, he conferred the aforesaid archdeaconry upon the same R., who petitioned that the archdeaconry itself, assigned to him *with reason* by virtue of both the first and the second grant, be confirmed by the Apostolic See.

To his objections you replied in order as follows: although mention of the dean was not expressly made in the archbishop's letters directed to the chapter, he nevertheless could not or ought not on that account to appear excluded, as the opposing party alleged; rather, he was contained in the chapter, just as a part is contained in the whole, of which the dean is an honorable part, while the archbishop is the head, nor does it happen that in one body [*without*] *a monstrous prodigy two heads are found.* [*You endeavored to show in many ways that the sentence of excommunication issued by the dean and chapter did not bind you: both because you had by no means received the fruits of the chancellorship, since you had been constituted by the archbishop proctor only of the spiritualities; and because neither you nor another could be coerced on occasion of a simple mandate, by which coercion is committed to no one, especially since that sentence, whatever it was, had been promulgated after an appeal interposed by you.*

Hence our venerable brother the Archbishop of Canterbury, then legate of the Apostolic See in England, having shared the counsel of many fellow bishops and other prudent men, pronounced that you were not bound by a sentence of this kind, as you endeavored to show from the rescript of the legate himself. Moreover, since you were absent at that time, you did not intrude yourself into the administration of the archdeaconry; but when you later saw investiture denied to you by the chapter contrary to justice, you entered the archdeaconry by mandate of the superior and began to minister in it as pertained to your office. But you wholly denied that homicides or other such things were perpetrated there by you, or that you had renounced or even abjured the archdeaconry, asserting that, at the time when the opposing party said that you had renounced or abjured it and that the archdeaconry had been conferred upon him, the archbishop regarded you as archdeacon and your adversary alike as excommunicated and as an intruder. Hence, by authority of our letters, at the mandate of our beloved son P., cardinal priest and then legate of the Apostolic See, before our venerable brother the Archbishop of Rouen and his fellow judges in Normandy, and thereafter before the Bishop of Lincoln of good memory and his fellow judges in England, that same archbishop drew your adversary into litigation concerning his intrusion; and we recall that we received the attestations taken concerning that business.] *You further added that, even if you had done those things, they nevertheless could not effectually be objected against you by your adversary. Rather, silence should be imposed upon him concerning the archdeaconry itself and, your institution having been approved, restitution should be made to you; this you endeavored to show from the confession made in judgment and repeatedly reiterated by the opposing party. For Roger himself, when questioned by us in law as to the time from which the Archdeaconry of Richmond had been assigned to him by the chapter, answered that around the next feast of the Ascension three years would be complete. Therefore, since it was established from the date of our letters that at that time the archbishop was staying at the Apostolic See, and in them the ancient law had been declared by us, so that the time during which he approached the Apostolic See,* [*and*] *remained there, or departed from it was not to be computed within the six-month period, you said that it was plainly established that that period had by no means run against the archbishop. But even if four years had elapsed, as the opposing party, repenting of its earlier response, proposed in the last place—which on your behalf was said not to be possible in law—since even then he had begun the journey to come to the Apostolic See, although he had not pursued it continuously, having been delayed by manifold impediments, the interpretation of our rescript pertained also to a time of this kind; moreover, prescription could not harm one placed in exile. But the act of the chapter could not excuse that same R., because, since the institution made by the archbishop had preceded it, the chapter as inferior could not reject what the superior had ordered, for, even if you had not been admitted contrary to the statute of the privilege, they nevertheless could not proceed against you—especially while absent and not contumacious—because they had neither been constituted executors of the privilege nor could they be judges and actors at the same time. Therefore, if anything was to be proposed by them against the archbishop's act, a question of this kind was to be brought to the superior tribunal so that it might be ended by its authority. Consequently, while your institution made by him was pending—by him to whom it pertained both by common law and by authority of the aforesaid privilege, by which collation of personates and prebends was reserved to the archbishop—the same R. ought not to have crept into the place of a living person.* [*For blessed Gregory says: "We depose from the honor of that archdeaconry the man who consented to be advanced to another's archdeaconry contrary to the rule of justice; and if he should presume thereafter to minister in the same place, let him know that he is deprived of participation in holy communion." By the authority of this decree, therefore, you asserted that your adversary was to be deposed from the office of the archdeaconry that he had received badly, especially since he vehemently insisted upon that first surreption and endeavored through an institution of this kind to prove his purpose; and you humbly petitioned that the archdeaconry itself be restored to you.*]

We therefore, having heard and more fully understood these and the other things that the parties wished to propose in our presence, because it was established to us that the aforesaid archdeaconry had first been granted to you by the Archbishop of York [*and*] that, the institution made by him not having been rejected according to the order of law, an archdeaconry not vacant could not and ought not duly to be transferred to another, thought that silence should be imposed concerning it upon the aforesaid R., who consented to be advanced to another's archdeaconry contrary to the rule of justice, decreeing by sentence that the institution made concerning you by the *Archbishop of York* take effect. But *thereafter,* if anyone who wishes and is able should determine to propose anything against you concerning the renunciation, abjuration, or any of the foregoing matters, he will be able to try it by judicial order. [*Therefore let no one, etc. Given at the Lateran, on the Kalends of June.* 1202.]

Chapter VIII

Latin source headnote: Once a person has been received as a canon, the chapter is bound to provide for him as soon as the faculty presents itself.

The same, to C., Canon of Tortona.

When, concerning the question of a prebend of Tortona *that was disputed between you on the one side and our venerable brother the bishop and our beloved sons the canons of Tortona on the other, you and the proctors of the other party were constituted in our presence, we appointed for you as auditor our beloved son Hugh, cardinal priest of the title of Saint Martin. Before him it was alleged on your behalf as follows: when Odo, Bishop of Tortona of good memory and your paternal uncle, having returned from the Apostolic See, earnestly requested the canons of Tortona to receive you as a canon and brother, they, cheerfully assenting to his requests, received you, no mention being made of a first or second* [*prebend.*] *From that time until now you have had a place in the choir and chapter like the other canons, have read lessons in the church and sung responsories, and houses in the canonry had been assigned to you by the aforesaid bishop* [*in the name of a canon;*] *you possessed and possess them in quiet. And since, of those canons in that church of Tortona who possess no prebend in it, you were the first instituted and received, and now a benefice in it is vacant, you humbly petitioned us that we deign to give a strict mandate to the canons of Tortona that they assign the vacant benefice to you, every difficulty being set aside, and cause you to enjoy peaceful possession of it. But the proctors of the other party answered to the contrary that, since a fixed number of canons had been instituted in the church of Tortona and confirmed by writings of the Roman Pontiffs, and the canons were bound by an oath given to observe that constitution, we gave them a mandate by our letters to receive our beloved son B., our subdeacon and chaplain, as a canon and brother and assign him a prebend as to one of the other canons. But because the established number of canons was then full in that church, they could not put our mandate into execution. After no small time, however, the aforesaid O., formerly bishop, pressed the canons of Tortona by persuasions, threats, and terrors to receive you as a canon for the prebend next to become vacant, steadfastly promising them that he would free them both from the petition of the citizens of Tortona and from execution of the apostolic mandate that they had received for the reception of our same subdeacon; and thus, fraudulently circumventing them, he caused you to be received for the prebend next to become vacant.* [*But when our beloved son R., cardinal priest of the title of Saint Peter in Chains, was exercising the office of legation in the regions of Lombardy, he caused our same subdeacon to be instituted as a canon of the church of Tortona through a certain cleric of his, assigning to him a stall in the choir and a place in the chapter, in the presence of the aforesaid former bishop, who made no mention of your reception. But the aforesaid canons, although because of the insolence of the clerics they did not show it publicly, held wholly valid the institution made concerning B. When, around the past Easter, the said former bishop paid the debt of the flesh, and the aforesaid bishop who now exists—who had been Archdeacon of*

the church of Tortona—was substituted for him, those same canons unanimously decreed that the vacant prebend be conferred upon our aforesaid subdeacon, as we perceived was contained in their letters; and the proctors of the chapter itself granted the aforesaid vacant prebend to him in our presence. Hence it was humbly petitioned of us that, wholly annulling your institution as attempted contrary to the Lateran Council and absolving the church of Tortona from your impetition, we deign to confirm by apostolic authority the grant of the aforesaid prebend made to our same subdeacon.] *We therefore, made more certain by the aforesaid cardinal of those things that were proposed on either side, holding valid by the counsel of our brothers the grant made by the aforesaid canons to our aforesaid subdeacon concerning the aforesaid prebend, thought that it should be confirmed by apostolic authority.* But since it is established *both by your assertion and by the confession of the other party* that you were received as *a brother and* canon of the church of Tortona, although the opposing party alleges that your reception was made contrary to the Lateran Council, nevertheless, because this was not proved, *the other party wholly denying it,* and the canons themselves did not appear able by law to object this against you, since they confess that they received you contrary to the statutes of the aforesaid council, we decree by sentence that a prebendal benefice be conferred upon you in the church of Tortona as soon as the faculty presents itself, since, from the time you were received as a canon, you ought not to lack a prebend. [*Willing, moreover, etc. Given at the Lateran, on the seventh day before the Ides of July.* 1202.]

Chapter IX

Latin source headnote: If one having a prebend in the same church receives a dignity with a prebend, or another prebend, the first becomes vacant. And although it is confirmed to him by a superior, nevertheless an impetration of it made by another is valid, even when the other's possession is not mentioned, because that possession is not colorable. This it says according to the true understanding. Panormitanus.

The same, to the Bishop and Master P., Canon of Hildesheim.

We have received your letters, *by which you took care to signify to us* that, when we wrote to you on behalf of *our beloved son* D. the cleric, that you should take care to invest him by apostolic authority with the vacant prebend of Saint Willehad at Bremen, which he said had devolved upon our donation according to the statutes of the Lateran Council, *if the canons to whom we wrote concerning this did not take care to execute it; and when Herbert the provost and certain canons of that church, together with Daniel himself and Master B., a canon of that church, were for this reason constituted in your presence,* it was proposed before us concerning the fact that *the same* H. the provost, formerly a simple [*existing*] canon of the same church, had been elected from that *church* as a canon in the greater church, and afterward, when the space of *one year or* a year *and a half* had elapsed, was assumed as provost in that church of Saint Willehad, nevertheless retaining the former prebend that he then had in that church; *and concerning this the parties agreed, saying to one another that these things stood thus. It was also proposed by one party that the provost himself had, in addition to that prebend, another prebend annexed to the provostship, which the same provost and his supporters denied to be a prebend. Furthermore, it was alleged in law that, from the time when the same provost had been called from the lesser church to the greater, the former prebend had begun to become vacant by law according to the statutes of the canons. Then it was alleged on behalf of the cleric that the first ordinance of that church had been that there should be thirteen persons in it, namely the provost with twelve brothers; this would in no way be observed unless that prebend were said to be vacant.* But the provost alleged to the contrary that it was *almost* of general custom that one man should have several prebends in the same church, and that, when the Archbishop of Bremen invested the provost himself with the provostship in full

synod, he confirmed to him both that provostship and the prebend with the common assent of the canons, *binding with the bond of excommunication those who should trouble him concerning this. Hence it was objected against the aforesaid cleric that on this account he had incurred the sentence of excommunication; but he denied that such a confirmation had intervened, and asserted that, even if it had intervened, it was not valid by law, because that thing which cannot be obtained by law could reasonably be confirmed to no one. He also said that he had never been bound by a sentence of excommunication on this account, since he proceeded concerning these matters by authority of a superior.* Hence, because it appeared doubtful to you whether, when someone is elected from one prebend to another, the former at once begins to become vacant, or whether it ought to be adjudged away from him by sentence, or whether, on account of the confirmation of this kind that is expressed above, that prebend ought to be said not to be vacant, you wished to consult us *before you should determine anything concerning this.* Therefore, since, if it is thus, that prebend, even if not in fact, is nevertheless known to be vacant by law, *by apostolic writings we command* your discretion that, after previous admonition, you compel the *aforesaid* provost *to resign that prebend* without difficulty, *by ecclesiastical censure,* appeal being removed; and when it has become vacant in fact, take care, *supported by our authority and with the obstacle of appeal removed,* to confer it upon the aforesaid cleric, *inducting him into its corporal possession and defending him once inducted; but restrain by ecclesiastical censure those who rashly determine to oppose themselves.* [*But if, etc. Given on the fourteenth day before the Kalends of June.* 1205.]

Chapter X

Latin source headnote: In churches without a fixed number, vacancy of prebends or canonries is not possible, nor does devolution to the superior occur there from six months' negligence in not providing the church with ministers. This it says, and it is a notable case.

The same, to the Bishop and Archpriest of Pavia.

It was intimated to our ears on behalf of the church of Asti that, when certain prebends in it had been vacant for four years and more, *our venerable brother* the Bishop of Asti *diligently admonished his canons to order the church. When they did not admit his admonition,* the bishop instituted certain persons there, believing this to be lawful for him by the Lateran Council. But those instituted, knowing that an institution of this kind was not firm, had recourse to *our venerable brother* the Archbishop of Milan, who ordered them as canons of the church of Asti and inducted them into corporal possession of the prebends, with the chapter of that church furnishing assent, except only three, who took care to oppose themselves to an institution of this kind. *Those three said that the election ought to be annulled because neither the bishop nor the aforesaid archbishop could by the grant of the Lateran Council have ordered the aforesaid church, since each had been negligent and remiss in that ordering during the time granted to them by the canon. But the other party said to the contrary that, although the bishop's institution was not valid, nevertheless the archbishop's ordering was valid by law, because the time granted to him by the canon did not run except from the time when it had been made known to him; to prove this it introduced manifold reasons. When these things had been proposed on either side,* finally both parties confessed in agreement that in the aforesaid church there were no distinct prebends, nor was the number of canons fixed. We therefore, *having diligently heard these and the other things that were proposed on either side,* clearly understood that the statute of the Lateran Council concerning benefices vacant beyond six months had no place at all in this matter, *since,* even if perhaps the church of Asti suffered a deficiency of canons, *nevertheless no prebends were vacant in it, since in it neither are there distinct prebends nor is the number of canons determined.* Hence the institution made by the archbishop or bishop on occasion of the aforesaid council ought to lack the

strength of validity. But because the whole chapter, except *only* three, *approves and* desires the reception of the aforesaid persons, and nothing reasonable has been objected and shown against them by those three, *by apostolic writings we command* your discretion that, *after diligently inquiring into the truth,* if the resources of the church of Asti suffice, you cause the aforesaid clerics, *with every obstacle of contradiction and appeal removed,* to be held as canons according to the custom hitherto observed. [*As for contradictors, etc. Given at the Lateran, on the seventeenth day before the Kalends of July.* 1204.]

Chapter XI

Latin source headnote: One having the power of conferring can by law deliver to another the power of conferring the first benefice that shall become vacant.

The same, to the Bishop and Chapter of Laon.

Constituted in our presence, *our beloved son* H., *subdeacon* [*of ours*] and canon of your church, humbly intimated *to us* that you, brother bishop, gave him power to confer the sacerdotal prebend that should first become vacant in your church, and that W., Archbishop of Reims *of good memory,* then legate of the Apostolic See, *strictly* commanded you, sons of the chapter, by our authority, *as appears through his letters directed to you, which were read before us,* that, when that prebend *in your church* became vacant, you receive to it, without the interposition of another person, that person upon whom the same H. should wish to confer it, *and take care to invest that person with it without any difficulty. The same subdeacon* [*also*] *asserted that, when he was about to approach the Apostolic See, he, taking precaution, appealed lest you, brother bishop, if perhaps meanwhile some sacerdotal prebend happened to become vacant, confer it upon anyone, or you, sons of the chapter, receive anyone presented to it except one whom the aforesaid subdeacon should determine to present*. Therefore, *by apostolic writings we command* your discretion that you admit without any contradiction that person upon whom the aforesaid H., when the sacerdotal prebend happens to become vacant, should determine canonically to confer it; and meanwhile you, brother bishop, are not to presume to confer a prebend of this kind upon anyone contrary to the form of your grant. *Otherwise, know that we have commanded our beloved sons the chancellor and Helvin and Adam, canons of Paris, to compel you to this by ecclesiastical censure, appeal being removed, reducing to invalidity anything that they learn was attempted, after the appeal lawfully interposed to us by the aforesaid subdeacon, contrary to the grant made to him concerning the sacerdotal prebend.* But because such grants, if drawn into a precedent, could be made in fraud of the canonical sanction by which ecclesiastical benefices are forbidden to be granted or promised before they become vacant, we do not wish that, on occasion of a mandate of this kind, which contains a personal grace, license be granted to those wishing to employ fraud. [*Given at the Lateran, on the tenth day before the Kalends of July, in the seventh year.* 1204.]

Chapter XII

Latin source headnote: The Lateran Council concerning benefices vacant beyond six months is not extended to bishoprics.

Innocent III.

Our beloved son Master G., your canon, *formerly* suggested to us that, when your bishop *of good memory* entered upon the way of all flesh, *the greater and sounder part of you had agreed upon him and proposed to elect him as bishop, but, because the noble man the Count of Crotone impeded it, the election was not*

celebrated. Afterward the same count, investing Madius his chaplain with that bishopric, enjoined you either to depart from his land or to elect that M. as pastor. When our venerable brother the Archbishop of Santa Severina, *then elect, heard this, he summoned the aforesaid William to his presence and,* asserting that authority to elect had devolved upon him because of your negligence, elected him as your bishop. [*But after this became known to the aforesaid count, he caused you, summoned to his presence, to be detained in custody until you elected the aforesaid Madius in common. Approaching the presence of our beloved Gerard, cardinal deacon of Saint Adrian and legate of the Apostolic See, he obtained the benefit of confirmation from him. But afterward the aforesaid William, having gone to that cardinal, appealed to our hearing lest he cause him to be consecrated; and finally, constituted in our presence, he proposed that the same Madius had betrayed a certain castle, had received investiture from a lay hand by means of money, and even before obtaining confirmation had wasted many goods of the church by dissipating them. Hence we commanded our venerable brothers the Archbishop of Cosenza and the Bishops of Bisignano and Strongoli to compel you and others who might happen to be named to tell the truth concerning all these things, and, if they found the election concerning the aforesaid Madius irregularly celebrated, to declare it null and void, compelling him by means of justice to restore the things of the church, and afterward, after carefully inquiring into the truth concerning the election of the aforesaid William, to establish what was just, appeal being removed. As we perceived was contained in their letters, when they had peremptorily cited once, twice, and a third time both the aforesaid Madius and you, and also the abbots of the church of Gerace, the said Madius, though awaited for four months, neither approached them nor permitted you or the abbots to approach. But when, because of suspicion of dissipation, they suspended him from administration of the episcopal goods, and he nevertheless presumed to administer, they pronounced a sentence of excommunication against him; contemptuously disregarding it, he did not cease to celebrate. Hence, since it was established to them through the statements of sworn witnesses that the same Madius had received investiture of the bishopric from a lay hand, had incurred perjury, and had manifoldly perpetrated treason, homicides, and also simony; and that his election had been extorted, and his consecration attempted not only after an appeal but also otherwise contrary to the canons; finally, having taken the counsel of prudent men, they annulled by sentence what had been done concerning him.*] We therefore, [*having diligently heard these and the other things that were set forth to us concerning that business,*] attending that the canon of the Lateran Council, issued by Pope Alexander against the negligent, is not accustomed to be extended to an archbishopric or bishopric, but to be restricted to other personates and lesser ecclesiastical benefices, annulled an election of this kind, [*not because of the guilt of the person, but*] because justice required it. [*The said person also, etc. Given at San Germano, on the sixth day before the Ides of July, in the eleventh year.* 1208.]

Chapter XIII

Latin source headnote: A promise of a benefice that will become vacant is not valid.

The same, to the Prior of Hastings and the Superior of Saint Frideswide.

From the tenor of your letters we have received that, when the cause that was disputed concerning provision for I. the cleric on the one side and the abbot and convent of Battle on the other (*And below:*), after joinder of issue the said cleric exhibited before you a certain charter of *those* monks, *expressly* containing that they would assign to him the first church pertaining to their donation *worth ten or fifteen marks, nevertheless proving through suitable witnesses that, after a promise of this kind, although they were able, they had been unwilling to provide for him, though they had been admonished concerning this; wherefore he insistently petitioned that the said abbot and monks be compelled to assign him a revenue of at least ten marks. But to these things it was answered in opposition that he could not sue them by reason of the promise, inasmuch as it*

was made contrary to the statutes of the Lateran Council, which it appeared was proved through the charter exhibited, especially since mention was made in the letters not of any church but only of a promise. Therefore, when this had been disputed at length on either side before you, some asserting that they could be sued and others holding the contrary opinion, you, doubting what the law was in this matter, were unwilling to proceed further in the business until you received concerning this the good pleasure of our will, humbly supplicating us that we deign by our letters to make you more certain what was to be done in this regard. We therefore, attending that the aforesaid promise is not valid, inasmuch as it was attempted contrary to the statutes of the Lateran Council, *by apostolic writings command* your discretion that, imposing silence upon the aforesaid cleric concerning this, you absolve the said abbot and monks from his impetition. [*Given at the Lateran, on the second day before the Ides of December, in the eleventh year of our pontificate.* 1208.]

Chapter XIV

Latin source headnote: A prelate who promises to provide when he is able is bound.

The same.

Approaching the Apostolic See, *our beloved son* R. the cleric showed us by his intimation that, although you promised that you would provide for him in an ecclesiastical benefice when you were able, as clearly appeared through the letters of the delegated judges drawn up concerning it, *you have thus far not taken care to effect this, alleging before the aforesaid judges that such a promise in no way bound you, since it appeared to have been made contrary to the statutes of the Lateran Council, which forbids the promise of a benefice not vacant*. But we, considering that it is one thing for a prelate to promise the collation of a benefice when he is able, and another when it becomes vacant, since in many cases a faculty could present itself in which collation should not be deferred in expectation of a benefice that will become vacant, *by apostolic writings command you* that, when you are able, you assign an ecclesiastical benefice to the aforesaid R.; [*otherwise, we have commanded by our letters the Abbot of Saint John and the Dean of Soissons to compel you to this by ecclesiastical censure, appeal being removed.*]

Chapter XV

Latin source headnote: If the power of conferring pertains to the chapter and the prelate as prelate, it does not pass from one to the other by lapse of time; it is otherwise if the prelate participates as a canon, because then it passes from the chapter to the prelate, unless he commits fraud. This it says, and the text is very frequently alleged.

Innocent III.

You petitioned to be instructed by the Apostolic See whether, since the donation of the prebends of your church pertains to you and your archbishop together, the donation of a vacant prebend remains with the archbishop himself if you have neglected [*together*] to order it within the six-month period. To this we briefly answer *you* that, if you and the same archbishop have been negligent concerning this within the prescribed time, just as the power of conferring does not devolve from him to you, so neither does it devolve from you to him; rather, according to the statutes of the Lateran Council, the donation *of those prebends* passes to the superior, unless perhaps the archbishop has the right of conferring with you, not as prelate but as canon. And in this case, when he has *perhaps* fraudulently impeded it, fraud ought not to assist him. [*Given at the Lateran, on the fourth day before the Ides of January, in the fourteenth year of our pontificate.* 1212.]

Chapter XVI

Latin source headnote: Just as a patron cannot promise that he will present someone to a benefice that will become vacant, so neither can he give the power of presenting before the benefice becomes vacant.

Honorius III, to the Bishop and Provost of the Chapter of Cambrai.

Since our beloved daughter in Christ, *the noble woman Joan,* Countess of Flanders, *overcome by the importunate requests of certain persons,* has made *unlawful* promises concerning benefices of churches not vacant in which she holds the right of patronage, and has placed their donations in the hands of others, *as has been intimated to our ears, we command your discretion* that, decreeing this invalid, you forbid her *by our authority* to presume to attempt similar things henceforth.

Title IX: That Nothing Be Innovated While the See Is Vacant

Chapter I

Latin source headnote: While a see is vacant, its status ought not to be changed.

Innocent III, to the Prior and Convent of Glastonbury.

He who is the searcher of hearts *and knower of secrets* knows that, although Pope C. *of good memory,* our predecessor, erected your church [*as a see*] into a cathedral, uniting it to the church of Bath so that the bishop of each would be the same, *and took care to confirm his constitution not only through his privilege but also through many other writings,* nevertheless, because you asserted that this union *was a confusion,* complaining that *it* redounded to the grave prejudice of the church of Glastonbury, since by it religion was dissolved, almsgiving was defrauded, and hospitality was taken away, we, *inclined by your supplications,* began diligently to direct our attention, *as much as was fitting,* to relieving the status of your church. *And because it appeared incongruous that we should suddenly annul the statute of our predecessor in this matter, since we wish to defer to him insofar as we can with God, just as we wish our successors to defer to us insofar as they will be able with God, while the union remained we so disposed of the other matters—however much this displeased Savaric, Bishop of Bath of good memory, who frequently labored on this account to the Apostolic See—that the status of your church appeared to have been relieved for the better. Hence, after diverse negotiations and manifold deliberations, at the petition of the same bishop, after he could obtain nothing else from us, we finally took care to strengthen by apostolic protection what had been ordained concerning this by provident and honorable men under authority of our mandate.* But after the death of the *aforesaid* Bishop of Bath, *having recourse to our presence,* you humbly petitioned that, because the time had arrived when the ruin of your church could without scandal be raised *to its former state,* since both the church of Bath *and that of Wells* together petitioned the same thing, and the king with the magnates of the kingdom, and certain bishops with many abbots, also sought the same, we should wholly dissolve the union and reduce your monastery to its ancient state, to be governed under the rule of an abbot. We therefore, *attending diligently* that, while an episcopal see is vacant, nothing ought *concerning this* to be innovated, since there is no one to protect the episcopal right—especially lest we should appear to have favored the person more than the church if we suddenly changed after his death what we granted while he lived—could not hear your petition *in its entirety without harm to conscience and danger to reputation. But so that, according to the customary manner that you have experienced to be both useful to you and honorable to us, one may proceed gradually from the lowest to the highest,* granting *you* the aforesaid authority, we decree that, when

the church of Bath has been ordered concerning a prelate, *if you wish to show that provision has not yet been made fully for your church to avoid detriment or prejudice,* you are to have free faculty to prosecute your right before the Apostolic See; meanwhile, however, let the same monastery be governed *freely* under the care of the prior. [*Therefore let no one, etc. Given at Rome at Saint Peter's, on the second day before the Ides of March, in the ninth year.* 1206.]

Chapter II

Latin source headnote: Benefices pertaining to the collation of a prelate cannot be conferred by the chapter while the see is vacant.

Honorius III, to the Bishop of Calvi and Masters V. and S., Canons of Sessa.

That sincerity of devotion *and sincere devotion that our beloved son Master R., Dean of Teano, is known to have had until now toward our person and the Apostolic See induce us, in consideration of his learning and probity, to bear him in the bowels of charity and to be unwilling to deny him those things that ought to be granted according to God. Hence we* thought that the church of Saint Leucius *of Capua, with all its appurtenances,* with which *our venerable brother R.,* Archbishop of Capua, by our mandate invested Master R. in the name of a prebend, the grace of our donation preceding, should be confirmed to him *by apostolic authority,* notwithstanding a grant made *concerning that church* to another by the chapter, or our confirmation, if any *perhaps* appears to have been obtained in common form; since it is nowhere found to be provided in law that, while the see is vacant, the chapter performs the function of the bishop in collations of prebends. Nor in the same case can the power of conferring prebends be said to have devolved upon the chapter by the negligence of the superior, since there was no superior there who could confer them in fact or in law. *Therefore we command your discretion that, with the obstacle of appeal removed, you induct the same master into corporal possession of that church and defend him once inducted.*

Chapter III

Latin source headnote: A judgment had against a church while the see is vacant is not valid.

The same, to the Bishop of Burgos.

When formerly the proctor of the church of Saint Mary of Castroforte and G., Bishop of Burgos *of good memory,* your predecessor, were constituted before Pope I. *of good memory,* our predecessor, the said proctor sought from that bishop restitution *both* concerning the freedom of electing a prelate for itself *and concerning the lands of that church and other things, of all of which his party had been despoiled, as he said.* (*And below:*) *Therefore, after issue had lawfully been joined concerning the foregoing before that predecessor of ours, and afterward confessions had been made and witnesses received before delegated judges, the cause, having been instructed, was remitted to us.* We therefore, *when the proctors of the parties, constituted in our presence, had litigated at length before us concerning the foregoing,* thought that the depositions of the witnesses who had been received while the church of Burgos was vacant and lacked a lawful defender should be rejected.

Title X: On Those Things Which Are Done by a Prelate Without the Consent of the Chapter

Chapter I

Latin source headnote: An alienation of ecclesiastical property without the approval of the chapter is not valid.

From the Council at Valencia.

A donation, sale, or exchange of ecclesiastical property by bishops will be invalid without the approbation and subscription of the clerics.

Chapter II

Latin source headnote: In a temporal alienation that a prelate makes, the silence of the chapter is held as consent.

Alexander III, to the Bishop of Norwich.

It was contained [*in the letters transmitted by you to us that, when a question was disputed before you by our mandate between Master Hubert and Master N. concerning the tithe of W., it was established to you that Emma, Abbess of Saint Mary of Winchester, by common vote and unanimous consent, with the convent furnishing assent, granted that tithe to the aforesaid H., and Ralph, Archdeacon of Winchester, made investiture thereof to him through bread and a book; but Master N. proved before you by suitable witnesses that the aforesaid abbess had previously given the aforesaid tithe to him, the convent not contradicting, before she gave it to the aforesaid H., and that her grant had been confirmed by the diocesan bishop. Hence, because you wished to consult us as to which grant ought rather to be relied upon,*] we answer your consultation in this manner: the grant of the tithe first made by the abbess, if it was made with the convent knowing and not contradicting, ought to have firm strength. But if *the aforesaid abbess,* while the convent was ignorant or contradicting, first granted *her* tithe to the aforesaid H., and not long afterward gave the same tithe to the same man with the assent of the convent, [*since it is established to you that it was given to him,*] the second grant ought to prejudice the first.

Chapter III

Latin source headnote: A temporal alienation made without the consent of the chapter is strengthened by its ratification.

The same, to the Bishop of Worcester.

Since some time ago, *if we remember correctly, we granted you by our letters that, if John your predecessor conferred the church of Bibury upon the abbot and brothers of Oseney while the chapter of your church protested, it would be lawful for you to revoke it; but, as you assert,* we granted [*letters directed to you*] *to the aforesaid brothers, so that you leave the church itself to be possessed peacefully by them, being forgetful of the writing that had been granted to you by us concerning this. Although we granted this to you, nevertheless we earnestly admonish and exhort your prudence that, from regard for God and reverence for blessed Peter and us, if you can in any way without grave detriment to your church, you leave that church to the aforesaid brothers in peace and quiet, because it befits your providence to direct attention to the advantage and advancement of religious places and to hold valid and firm what that predecessor of yours did from zeal for piety. But if perhaps you cannot be induced to leave the same church*

to them, notwithstanding the letters that the aforesaid brothers obtained concerning this, we wish the writing granted to you thereof to stand in its stability, because it is certain that, by the rigor of law, that grant which it is established was made by *that* predecessor of yours while the chapter protested is not valid, unless *the same chapter* afterward held that *grant* valid.

Chapter IV

Latin source headnote: A prelate ought not to institute or remove without the counsel of the chapter, or transact other business of the church. This it says together with the following chapter.

The same, to the Patriarch of Jerusalem.

The prudence of your discretion knows *more fully, as we believe,* how you and your brothers are one body, in such a way *indeed* that you are proved to be the head and they the members. Hence it does not become you, omitting the members, to use the counsel of others in the business of your church, since it is not doubtful that this is contrary both to your honor and to the institutions of the holy Fathers. Indeed, it became known to our ears that without the counsel of your brothers you institute and remove abbots and abbesses and other ecclesiastical persons, *not considering and attending how it is not doubtful that you transgress the statutes of the sacred canons, since in causes of this kind you are said to use the counsel of clerics and laymen dwelling around you, who are not of the body of that church, rather than that of your brothers*. Therefore we forbid this by apostolic authority. (*And below:*) For we annul by apostolic authority such institutions and removals, *if you make any henceforth,* and decree that they lack the strength of validity.

Chapter V

Latin source headnote: It is summarized above in the preceding chapter. A prelate ought not to institute or remove without the counsel of the chapter, or transact other business of the church. This it says together with the following chapter.

The same, to the same.

The more exalted the dignity in which, by the Lord's gift, you are preeminent, *the more it becomes and behooves you to have such diligence and gravity in all things that you may appear to perform everything without stain and reproach, and laudably administer the office of solicitude enjoined upon you. But we have heard, whereat we marveled, just as* [*also*] *we could rightly* [*thereat*] *marvel, that in grants and confirmations, omitting the canons of your church, you sometimes—indeed, often—seek the counsel of clerics and laymen dwelling around you who are not of the body of that church, and in those grants and confirmations you proceed according to their counsel and will; and also in privileges, which is wholly unbecoming to your honor, for greater authority and certainty you cause the names of your brothers who were absent to be subscribed as though they had been present. Therefore, because it does not become your prudence to set aside in the business of the church committed to you the counsel of your brothers, with whom you are proved to exist as one* [*body,*] *by apostolic writings we command* your fraternity that, in grants and confirmations and the other business of your church, you seek your brothers and transact and treat the same *business* with their counsel, or that of the sounder part, and establish the things that are to be established, correct errors, and scatter and root out the things that are to be rooted out. Nor are you in any way to permit the names of absent brothers to be inscribed, because such instruments are invalid and false, and on that account you could rightly fear a charge of forgery. *For*

we decree that all privileges in which the names of absent brothers were subscribed without their knowledge or while they were absent, or shall henceforth be written, are invalid, and we judge that they have no strength of validity.

Chapter VI

Latin source headnote: If a collegiate church has the presentation, the prelate shall present with the consent of the chapter or of its greater part, unless by custom or privilege it belongs to the prelate alone.

Celestine III.

That is known to be [*the dignity of the Apostolic See, granted to it by the Lord himself in blessed Peter, that, where some point of doubt arises, it is referred to its oracle, and what it establishes should be answered ought to be received and observed by all without any hesitation.*] *It has indeed been proposed to us on your behalf that,* since in your province it often happens that, to churches in which colleges are known to have the right of presentation, their abbots, either personally or through *their* letters, present suitable persons to the diocesan bishops, and after those presented have been *afterward* received, sometimes before *institution* and sometimes after, monks *or colleges of another order* contradict *and protest; concerning these things you seek to be certified by an open answer whether an institution already made or still to be made ought to be impeded on this account. To these things we* answer you in this manner: namely, that in the presentations of *such* prelates it ought to be understood that they are made with the assent of their colleges, without which they obtain no *manner of* validity. Hence, if it is established that the consent of the convent, or of its greater and sounder part, was not present, it is fitting that institutions of this kind be annulled, unless some of them prove by ancient and approved custom or granted liberty that the consent of the college committed to them ought not to be sought in collations of churches or benefices. [*Given at the Lateran.*]

Chapter VII

Latin source headnote: A donation that a layman makes to a church, with the consent of the diocesan alone, of tithes that he has held from another church in fief from of old, that is, before the Lateran Council, is valid.

Innocent III, to the Archpriest and Master of the Schools of Bourges.

Since the Apostolic See, *over which, although unworthy, we preside, is set above all churches throughout the world not by human but by divine institution, it is just and fitting that doubtful questions concerning diverse points of law be referred to it as mistress and mother, so that it which establishes laws may also distinguish those same laws, lest things that are seen to be diverse appear to be opposed.* Indeed, as we have received *from your letters,* when on the one side the Chapter of Saint Stephen *and the Chapter of Selles,* and on the other the monks of La Place, had submitted to your arbitration concerning a certain tithe *that they sought from those monks, and you, after summoning the parties, had taken cognizance of the cause,* the said monks alleged that donation of that tithe had been made to them by a certain knight and confirmed with the consent of *our venerable brother* the Archbishop of Bourges, the diocesan, acceding; and that they were fortified by the authority of Jerome, who, writing to Damasus, says: "If things that are known to be of divine right have at any time been wrongfully detained by laymen and have passed to the use of monks, with the bishop of the place *nevertheless* furnishing *them* consent, they will stand for them supported by perpetual validity." To the contrary, the opposing party alleged that the consent of the

bishop without the consent of the clergy was insufficient, by the authority of Pope Leo, who says: "Let no bishop dare to donate, exchange, or sell anything from the property of the church, unless perhaps he should do one of these things so as to provide for something better, and with the consent and deliberation of all the clergy choose that which is not doubtful to be profitable to the church." But because, *doubting concerning these authorities,* you wished to consult us, *humbly inquiring* whether, when a tithe is held by a layman, if it is conferred upon a church, the consent of the bishop without the consent of the clergy suffices to confirm the donation, *we* answer your devotion in this manner: the layman who detains the tithe is to be admonished to restore it to the church to which it belongs. But if perhaps he cannot be induced and assigns it, with the consent of the diocesan, to another church—especially to a religious convent—the donation itself will stand supported by perpetual validity. For the aforesaid authorities, although diverse, are nevertheless not opposed, since it is one thing to alienate what is possessed by a church and another to recall to ecclesiastical use what is detained by a layman. In alienation, according to the decree of Pope Leo, the consent of the bishop without the consent of the clerics does not suffice. But in recalling, according to the writing of Jerome, the consent of the bishop suffices, since by each the utility of the church is consulted. For in the Lateran Council it is also forbidden that any religious person receive churches and tithes from the hands of laymen without the consent of the bishops, by which it is indirectly given to be understood that the consent of the bishop suffices for it to be lawful for a church to receive tithes from the hands of laymen. But we understand this concerning those tithes that have been granted to laymen perpetually in fief. [*Given at Rome, etc., on the Nones of July, in the first year of our pontificate.* 1198.]

Chapter VIII

Latin source headnote: A bishop cannot without the consent of the chapter grant churches to other churches, even if he has the right of patronage in the churches granted.

The same, to the Archdeacon of Metz.

Recently yours *to us* (*And below:*) You also added whether it is lawful for a bishop or bishop-elect, together with the archdeacon alone apart from the assent of the greater church, since *both* the bishop is elected from it and the archdeacon is assumed from it, perpetually to confer vacant baptismal churches upon monasteries or conventual churches to which the right of patronage pertains. The solution of the other question is also clearly gathered from an epistle of Pope Leo, in which it is read to have been *established:* "Let no bishop dare to donate, exchange, or sell anything from the property of the church, unless perhaps he should do one of these things so as to provide for something better, and by the deliberation and consent of all the clergy choose that which is not doubtful to be profitable to the church." For a donation, sale, or exchange of ecclesiastical property by bishops will be invalid without the connivance and subscription of the clerics. By this you will know the question proposed in the second place to have been resolved, since it is not doubtful that perpetual grants of churches pertain to alienations.

Chapter IX

Latin source headnote: A bishop cannot, with the consent of the patron but without the consent of his chapter, confer parish churches or their revenues upon a monastery.

The same, to the Bishop of Ely.

The diligence of the pastoral office (*And below:* [*cf. c.* 28, *On the Office of a Delegated Judge, I.* 29]) Furthermore, you *carefully* asked, since parishes were delimited by the authority of Dionysius so that the proceeds of individual parishes might fall to the necessary uses of the church and the stipends of ministers, whether it is lawful for a bishop, without the authority of the Supreme Pontiff or at least without the will of his chapter, to confer upon religious men the revenues of some parish church, the support of a vicar being reserved. And since the statutes of the Lateran Council forbid a new pension to be imposed upon churches or an old one to be increased, you request to be instructed whether a bishop, with the patron consenting, can confer the whole church upon *religious places,* or confer some portion anew. To this we briefly answer that, saving the canonical constitution concerning the granting of a fiftieth portion to pious places, a bishop can do neither the first nor the second, without the will of his chapter, except by license of the Roman Pontiff. [*Furthermore yours, etc.* (*cf. c.* 7, *On Donations, III.* 27.) *Given at Rome at Saint Peter's, on the fourteenth day before the Ides of January.* 1204.]

Chapter X

Latin source headnote: The chapters of cathedral churches ought to be summoned and admitted to provincial councils.

Innocent III, to the Archbishop of Sens and His Suffragans.

Although the members of the body *of Christ* (*And below:*), the chapters of the cathedral churches of the province of Sens transmitted *their* complaint to us that the Archbishop of Sens and his suffragans were unwilling to admit their proctors, recently summoned to a provincial council, to its deliberation, *although certain things are customarily treated in councils of this kind that are known to pertain to those chapters, for which reason they appealed to our hearing. Indeed, having heard and understood what their messengers wished to propose concerning these things, and likewise the letters that you took care to send us concerning the same business, we had diligent deliberation thereupon with our brothers, and indeed in agreement* it appeared to us and to those *same* brothers of ours that the chapters themselves ought to be invited to councils of this kind, and their messengers admitted to deliberation, especially concerning those things that are known to affect the chapters themselves.

Title XI: On Those Things Which Are Done by the Greater Part of the Chapter

Chapter I

Latin source headnote: In ecclesiastical corporate bodies, what is done by the greater part regularly prevails, unless the lesser part reasonably contradicts. This it says.

From the Lateran Council.

Since in all churches that which has appeared good to the more numerous and sounder brothers ought to be observed without delay, it is exceedingly grave and most worthy of reproof that in certain churches a few sometimes, not so much from reason as from their own will, impede *the ordering of the many* [*and more prudent*] *and* do not permit an ecclesiastical ordering to proceed. Therefore, by the present decree we establish that, unless something has been reasonably objected and shown by the fewer and inferior, that which has been established by the greater and sounder part of the chapter shall always prevail, appeal being removed, and shall obtain its effect. Nor shall our constitution be impeded if perhaps someone says that he is bound by an oath to preserve the custom of his church;

for those things that come against the utility of the church and the statutes of the holy Fathers are to be called not oaths but rather perjuries. But if anyone has presumed to swear to customs of this kind, which are neither supported by reason nor consonant with the sacred statutes, let him be excluded from reception of the Lord's body until he has done worthy penance.

Chapter II

Latin source headnote: A canon does not interdict a church; rather, the bishop with the chapter ought to do this.

Celestine III, to the Bishop of Clermont.

The diligence of your probity asked *of us what you ought to observe and establish by the authority of an apostolic response* concerning the fact that certain of the canons *or even the least ones,* on *any occasion assumed,* subject your church to interdict without your assent and that of the other canons, either because a pension owed to the church is not rendered, *as is customary,* or *because sometimes* some cleric or parishioner has committed an offense, *through which the service of that church perishes and no small scandal is generated among the people. Concerning this* we answer your fraternity in this manner, *as we recall that we have answered in similar consultations:* namely, that you ought not to observe an interdict placed upon any church by one or some of your canons without your assent and that of your other *brothers, unless such an excess and one so grave has occurred that the church ought rightly to be silent,* nor permit that *an interdict under pretext of an occasion of this kind* be observed by others, *unless your consent and that of the other canons has acceded.* But if anyone has offended in these matters, let him be subject to ecclesiastical coercion, since sins ought to hold their authors, nor is punishment to be extended further than the offense has been found in the transgressor.

Chapter III

Latin source headnote: The common ordering of a church ought not to be impeded by the contradiction and appeal of one who has no interest. This it says with regard to the title.

Innocent III, to the Provost of Augsburg.

From the mouth of the one sitting *upon the throne proceeded a two-edged sword. This is the sword of Solomon, which cuts on either side, rendering to each what is his own. We therefore, who, although unworthy, by divine favor hold the place of the true Solomon, prudently draw this sword when we determine, through justice, questions lawfully debated in our hearing. For to this end the perplexity of emerging questions and the difficult knots of causes are referred to the Apostolic See: so that, when their merits have been disclosed by the assertion of the parties, a sentence may proceed from the Apostolic See bringing doubtful things into certainty and producing obscure things into the light, so that, once the dissension of the litigants has been quieted, justice may protect and follow its author. Hence it was that,* when T. and *our beloved son* B., a canon of Augsburg, approached our presence on account of the question disputed between you concerning the provostship of the church of Augsburg, *we appointed as your auditors our venerable brother* [*Octavian,*] *Bishop of Ostia, and our beloved son Gratian, cardinal deacon of Saints Cosmas and Damian. In their presence* it was proposed on behalf of B. himself that, *when our beloved son E., Provost of Augsburg, had been elected Bishop of Brescia, he requested the Augsburg chapter not to elect another as provost for themselves before his election was confirmed. And when they had assented to his requests, and that elect, having obtained confirmation of his election through his metropolitan and coming to Tivoli, had been invested with the regalia, B., the knight,* his father, approaching the Apostolic See, obtained from

C. *of good memory,* our predecessor, letters to be sent to *our beloved sons* the dean and chapter of Augsburg that, within the space of one month and *with the obstacle of appeal removed,* they elect and assume that man as Provost of Augsburg; a golden ring was sent to him as a sign of investiture, and certain executors of the apostolic mandate were appointed. But when the aforesaid *dean and* chapter heard that C., their former provost, had been elected and confirmed as Bishop of Brescia, although they had received the said letters, nevertheless, in contempt of them, after a term had first been assigned within which they ought to answer concerning the apostolic mandate, they elected H., then Dean of Augsburg, as provost. [*But lest his election be confirmed, the same B. appealed to the hearing of the Apostolic See. And although afterward various and manifold letters emanated from the Apostolic See concerning this on behalf of the said H., in which silence appeared to be imposed upon him, nevertheless this ought not to have been binding, because, absent and not summoned, he could not be condemned; and he nevertheless afterward contradicted the said H. concerning that provostship as much as he could, which he proved through witnesses. He also obtained apostolic letters by which it was commanded that he be inducted into possession of the provostship, notwithstanding any letters obtained from the Apostolic See before or afterward. Hence, when that man entered upon the way of all flesh and the dean and chapter of Augsburg wished to proceed to an election of a provost, he appealed to the Apostolic See lest this be done. But, not at all deferring to the appeal, after excluding certain canons and not summoning certain others, they elected you as their provost. Therefore he petitioned that your election, not made concordantly by all the canons but attempted after an appeal was interposed to us, be annulled, and that he be confirmed as provost, since he had first been invested with the provostship by our said predecessor, which he wished to prove through the ring transmitted to him by that predecessor.*

To these things it was answered on your behalf, son provost, in this manner: that which had been done concerning B. had been obtained before our predecessor held valid the election of the aforesaid E., which was also proved by witnesses; but even if the aforesaid letters had emanated from the Apostolic See after the said elect was confirmed as bishop, nevertheless no right had been acquired by him through this, since he had neither been invested with the provostship nor had the judges executed the apostolic mandate on his behalf. You proved this from the tenor of the letters themselves, in which it was expressly contained that the dean and chapter of Augsburg should elect and assume him as provost within a month, and that the ring was sent to him for receiving investiture. For if he had been invested by the Apostolic See, neither an election of the chapter nor an investiture of the executors would afterward have had any place. You also added that, when the said H. afterward approached the Apostolic See and fully explained to our aforesaid predecessor the manner of his election and the cause of the contradiction of the same B., our said predecessor, notwithstanding the investiture made to B., confirmed H.'s election, asserting that he had been circumvented by a false suggestion in what he had written on behalf of B., since it had not been expressed to him that B. was constituted below the sacred orders; rather, those who petitioned on his behalf had taken care to suggest to him that B. was suitable. And although letters on his behalf were presented to the said Bishops of Freising and Eichstätt and the greater Provost of Speyer, in which they were commanded by virtue of obedience to induct him into corporal possession of the provostship, notwithstanding any letters obtained from the Apostolic See before or afterward, nevertheless our said predecessor rescripted that they had by no means emanated with his knowledge; decreeing them null and void, he annulled anything done by their authority and commanded the same judges to detain the man who had obtained those letters in faithful custody until they should receive from him a mandate as to how they ought to proceed concerning this.

It was furthermore objected against the foregoing that, even if it were established—which was altogether false—that the aforesaid B. had been invested by the Apostolic See and that his investiture had by no means been revoked, nevertheless, because he exhibited to the said H. the reverence owed to a provost, which you proved through

witnesses, and received a stipend from him like the other canons, he had renounced his right and was no longer to be heard concerning this. Moreover, when the said H. paid the debt of nature, and the dean and chapter, by the counsel of our venerable brother the Bishop of Augsburg, had established first a space of six weeks, secondly another six weeks, and then three days for celebrating an election of the provost, so that the absent canons might come together for the election, and when, after they had assembled, the election was treated, the same B. did not contradict until he learned that both he and others constituted in minor orders were to be excluded from the election. Indeed, when the dean, intending to investigate the wills of all, asked the assent of our beloved son Walter, a canon of Augsburg, concerning that election, he answered that he would not express his intention in the presence of those who were constituted below the sacred orders, since according to the canonical statutes they could neither be elected nor, according to the custom of the church, have any voice in the election. Hence, when the chapter in common established that they were by no means to be admitted to the election, the said B., hurling insults at the same dean, Ulrich the archdeacon, and Herman the canon, appealed to the Apostolic See, summoning them by the appeal to approach us. And although he departed from the chapter with certain of his canons, nevertheless ten others, more numerous in number and greater in dignity—since only nineteen who had the right in the election had assembled for this—attending that he had no interest, since he had no right in the provostship, elected you, the eleventh, as provost, saving the grace of the Apostolic See, namely, lest they appear to commit anything in contempt of the Apostolic See.

Therefore, since it was established from the foregoing that he had neither been invested by the Apostolic See nor elected or assumed as provost by the chapter or delegated judges; and even if that had been established, it had been sufficiently proved on your behalf that that investiture, if there had been any, was afterward revoked by our aforesaid predecessor; and even if these things had not been proved, it had sufficiently been shown through witnesses that he rendered reverence to the said H.; nor was what had been proved in opposition—that he had always contradicted the aforesaid H.—contrary, since he could have contradicted in words and consented in deeds, especially since, although the witnesses said generally that the said B. always contradicted, nevertheless that generality ought to be restricted to suitable times, lest he be convicted of having spoken falsely if what they said were understood more generally; and since it followed from all these things that he had no interest for the purpose of appealing to the Apostolic See concerning this, you concluded that none of those things that had been done prevented your election from having to be confirmed.]

Therefore, when the said cardinals had faithfully reported to us and our brothers these and all the other things that had been proposed on either side, and the attestations, allegations, and reasons of both parties had been more fully heard and understood, because it was lawfully established that the aforesaid B. was not in any way invested with *that* provostship, although a mandate had been given that he be invested with it; and even if he had been invested with it, his investiture was annulled by our predecessor *once and a second time* for a certain reason; and even if it had not been annulled, he appears to have renounced his right through the fact that he *often* exhibited to the said H. the reverence that is owed to a provost: we, attending that it could not belong to him by law to impede the common ordering of the church through an appeal interposed on that account, and also understanding that you were canonically elected as provost by the greater part both in dignity and in number of those who were established to have the right of electing, *by the common counsel of our brothers* confirm your election by apostolic authority, imposing silence upon the aforesaid B. concerning *that* provostship. [*Therefore let no one, etc. Given at Rome at Saint Peter's, on the tenth day before the Kalends of July.* 1198.]

Chapter IV

Latin source headnote: A prelate, with the greater part of the chapter and against the contradiction of the lesser, can establish that every canon is bound to contribute toward the necessary repair of the fabric.

The same.

It was intimated to us on your behalf, brother archbishop, that you held a common deliberation for restoring the fabric of the church of Rouen, with you, *brother archbishop,* requesting that every canon, equally with you, assign some portion of his revenues to so pious and necessary a work. *But because diverse and varying intentions concerning this existed among you, sons and canons, lest so praiseworthy a work be neglected through your dissension, by authority of the present letters* we establish that, if any of you should determine to resist the statutes *and ordinances* concerning this of you, brother archbishop, and of the greater and sounder part of the chapter, the judgment of the majority shall prevail. [*Given at Rome at Saint Peter's, on the fifth day before the Ides of June, in the first year of our pontificate.* 1198.]

Title XII: That Ecclesiastical Benefices Be Conferred Without Diminution

Sole Chapter

Latin source headnote: The rubric suffices for the summary, or the summary is thus according to the Abbot: A secret collation of a benefice, although suspect, is valid, provided that it is otherwise proved to have been lawfully made. This it says, and it is a notable case; nevertheless it does not pertain to the title, nor do all hold this without distinction, but the greater part concludes with this summary.

Innocent III, to the Archbishop of Milan.

So that our judgment may proceed from the countenance of God, *and our eyes may see equity, we ought to walk along the royal road and turn neither altogether to the left nor to the right, judging the great as the small, because with God there is no acceptance of persons.* [*Indeed, it had come to our hearing by the report of many that the chancellorship of the church of Milan had been vacant for more than a year, whence according to the statutes of the Lateran Council its donation had devolved upon us. But wishing to defer to you with accustomed dignity, we earnestly requested and commanded you benignly to confer that chancellorship upon our beloved son Henry of Settala, our subdeacon and a canon of the church of Milan, well deserving with you and suitable for obtaining this office; and if after receipt of our letters you should establish anything concerning that chancellorship contrary to the right acquired for us from the Lateran decree, we decreed it null and void. But, having received our letters, you are said to have answered, as is declared from a public authentic instrument, that you had not conferred that chancellorship upon another because its proceeds were exceedingly necessary to you on account of the burdens of debts; nevertheless, after our letters had been opened and their tenor inspected, you would answer on the next day what you believed ought to be answered. Furthermore, as we learned from another instrument, after you heard the tenor of our mandate, changing your speech, you said that you could not confer that chancellorship upon our aforesaid subdeacon according to our mandate because, with the proceeds reserved to yourself, you had granted that chancellorship to Henry of Lampugnano ten months previously. And when this variation of your answers became known to us from authentic writings, although according to the Apostle we are ready to avenge all disobedience, nevertheless, still wishing to defer to you—to whom both when constituted in a lesser office and, as pleased the Lord, promoted to greater things, we deferred in many and great matters—we commanded you to send to our presence a*

suitable proctor who should lawfully show us in your name that you had donated the said chancellorship to a suitable person in canonical manner and at the time belonging to you. The said H. of Lampugnano, to whom the donation was said to have been made, should also, if he wished, approach our presence to defend his justice.

Therefore, coming to the presence of our apostolate, our beloved sons G., your proctor, and the often-mentioned H. endeavored manifoldly to excuse you concerning the variation of the answers, although credence is not easily derogated from public instruments, and according to the nature of things it could scarcely have been sufficiently shown that you had by no means answered what was said, even if perhaps it could have been shown that you had answered something else. But they produced before us two witnesses who, having been sworn, said that in the recently past January a year had elapsed since the Chancellor of Milan paid the debt of all flesh; and in the following May, when the kinsmen of Henry of Lampugnano repeatedly and vehemently pressed you to confer the chancellorship upon him, and you answered that you could not lack the proceeds of the chancellorship, nevertheless, after much insistence, it was obtained that you should retain the proceeds of the chancellorship and confer its right upon the aforesaid Henry. Therefore, with four present, among whom were the two aforesaid witnesses, in a more private chamber of your palace you invested that H. with the chancellorship by a book according to the aforesaid tenor, and received fidelity from him, prohibiting all of them from revealing that word to anyone. One of the aforesaid witnesses also added that, after our mandate had come to you and H. himself had already returned from Bologna, you, in his sight, solemnly and publicly delivered the seal to him, commanding him to exercise the office of chancellor; the other witness also asserted this from hearsay, and your same proctor answered that he believed it to be true. Henry also confessed the fact but denied the solemnity of the fact.]

Therefore, because after our prohibition you presumed to deliver the bull to him, although you ought at least to have deferred [*that*] *delivery until you consulted our good pleasure, we commanded our beloved sons I., Archdeacon of Milan, and O. Lento, a canon of Milan, etc.* (*cf. c.* 56, *On Appeals, II.* 28.) [*But we tolerated for a time, so that the merits of the business might become more fully known to us, the investiture that was said to have been made secretly through a book, although ecclesiastical benefices are not to be conferred by a clandestine donation, as Truth testifies, saying: "He who does evil hates the light." Moreover, because the office of the aforesaid chancellorship was alleged to be spiritual or annexed to a spiritual thing, since the chancellor by his office ought to do many things that are known to be spiritual, and for this reason it was said that it ought not to have been conferred under the aforesaid tenor, since the Apostle commands abstinence from every appearance of evil; and because also the aforesaid Henry of Lampugnano, although received as a brother for a prebend that would become vacant, was nevertheless asserted not to be an ordinary, and for this reason the chancellorship ought not to have been conferred upon him, since by law or custom it ought to be committed only to an ordinary, as he is written to be Chancellor not of the Archbishop of Milan but of the church of Milan, nor when the see is vacant does the chancellor lose his office—for not even the seal itself is changed when the pontiff is replaced—we thought that inquiry into these matters should be committed to the aforesaid I., Archdeacon of Milan, and O. Lento, canon of Milan, commanding them by apostolic writings that, every contradiction and appeal ceasing, having God before their eyes, grace and fear being set aside, without acceptance of persons, they should inquire most diligently into the truth concerning the foregoing; and, lest the truth be concealed, should compel by ecclesiastical censure the witnesses who were named to them, if they withdrew themselves through favor or fear, to bear testimony to the truth; and should send to the Apostolic See under the testimony of their letters whatever they found concerning all these things, so that, sufficiently instructed through their inquiry, we might better decide the business itself.*

But they, faithfully executing the apostolic mandate, summoned the ordinaries of the church of Milan and compelled them under penalty of excommunication to tell under the sanctity of an oath the truth they knew concerning the

foregoing articles from the fact of the chancellorship; they transmitted to our presence their attestations reduced to writing and fortified with a seal. They also interdicted the administration of the seal to the same H., as we received from their letters, according to the form of our mandate and by the counsel of wise men. And when the often-mentioned H. of Lampugnano presented himself to our sight with Roger his father on this account, we granted him free and benign opportunity to plead for himself in a common audience. Through his advocate he proposed that the aforesaid delegates, without an inquiry, despoiled him of execution of the seal contrary to the tenor of our mandate, since delivery of that seal had not been made after the second mandate; and therefore in the first place he petitioned that restitution be made to him. He endeavored manifoldly to excuse the form of the grant, alleging that simoniacal depravity in no way intervened in retention of the fruits: both because the office of chancellorship is neither spiritual nor annexed to a spiritual thing—for although the chancellor performs certain things that are known to be spiritual, as is clear from the attestations, he nevertheless does not perform them by the office of chancellor but by mandate of the archbishop, as is proved from the statements of the witnesses—and because he bought and sold nothing, since simony is described as the deliberate cupidity of selling or buying a spiritual thing or a thing annexed to a spiritual one; especially since before the delivery you separated the fruits, and thus retained for yourself what was yours, not receiving another's. He also alleged that he was suitable for obtaining the chancellorship, since by mandate of the Roman Pontiff he was instituted as a canon of the church of Milan, having a voice in the chapter and a place in the choir, and was admitted as a true and full canon in the deliberations and contracts of that church. Nor was it an obstacle that he did not have a full prebend, since, as was proved by the statements of the witnesses, the archdeaconry of that church, concerning which it is in no way doubted that it is a dignity and spiritual office, had sometimes been granted to one who did not have a full prebend. But the fact that, according to the testimony of certain persons, for sixty years it had been granted only to an ordinary with a prebend from the number of twenty canons, who are properly called ordinaries, could not harm him, since no prejudice was thereby generated against you preventing you from being able to confer the same chancellorship upon one who was not of the number of twenty, especially a canon. He alleged further that, even if an agreement to retain the proceeds for a time had intervened—which he nevertheless denied—between you and his parents, nevertheless he himself had been invested with the aforesaid chancellorship purely and simply; and therefore such an agreement ought not to harm him, since his parents gave or promised you nothing on his behalf.]

Furthermore, you alleged that, since no one ought to be condemned without an accuser, and nothing concerning that business was transacted in the form of a judgment, the depositions of the witnesses could not generate prejudice against you. But because this allegation appeared to touch our person, we thought it worthy to explain more fully the cause and order of the committed inquiry, lest anyone suspect in any way that we proceeded wrongly in this business, especially since the reason to be assigned ought to benefit posterity. For since it is settled law that, when the claimant does not prove, the person sued ought to be absolved even if he has furnished nothing, it could appear that maliciously or indiscreetly we imposed upon you, who were sued by us, the burden of proof concerning the three foregoing articles, namely, that you should show that you had donated the aforesaid chancellorship to a suitable person, in canonical manner, and at the time belonging to you. Furthermore, since the donation was secret and therefore not free of suspicion, and a year had already elapsed while no chancellor at all appeared, we not undeservedly believed that, according to the statutes of the Lateran Council, donation of the chancellorship had devolved upon us, and therefore we could have conferred it without fault, since, although we hold the place of God on earth, we nevertheless could not divine hidden things. Therefore, because against that which at first sight was justly presumed in our favor—especially since you answered the first time that you had conferred

the chancellorship upon no one—we granted you the faculty of proving on your behalf, it was not a burden but a grace, and proceeded not from malice but from benignity. You also furnished cause for the mandate that we commanded credibility to be made to us concerning the canonical manner, since you often intimated to us by your letters and finally proved through witnesses that, with the proceeds retained to yourself, you had granted the aforesaid office. From this we were not undeservedly suspicious against such a grant, *since it was also openly alleged that you had committed it to a person to whom, according to the custom of the church of Milan, it ought not in any way to have been committed.* And therefore we, who not so much from plenitude of power as from the duty of office can and ought to inquire into the truth concerning the excesses of subjects for their correction, especially since you furnished the cause and occasion, committed the inquiry to be made.

Therefore, after all things *that were to be proposed in our hearing had been diligently heard, we deliberated with our brothers, and in that deliberation* found you to have been culpable *principally* in three things: concerning the contrariety of your response, because not only to us, *who, although unworthy, hold the place of Jesus Christ,* but to no one should you knowingly have given contradictory answers; concerning carnality of mind, because not from carnal affection but by discerning judgment ought you to have dispensed an ecclesiastical office and benefice to the more suitable person; and concerning the dishonor of the act, because it was not lawful by any pact or agreement, under the aforesaid mode or tenor, to grant the bare office and retain the proceeds for yourself, since *also* in the Lateran Council it is forbidden that anyone, in conferring an ecclesiastical benefice, presume to retain a part of the proceeds for his own uses, and elsewhere it is found provided in the canon that ecclesiastical benefices ought to be conferred without diminution. Hence we believe that a distinction must be drawn as to whether he who gives a spiritual benefice receives its proceeds before the donation. For if he himself did not receive the proceeds before the donation, but another did, and from the donation it follows that he himself receives the proceeds, there is no doubt that simoniacal depravity intervenes concerning these things. But if he himself received the proceeds before the donation, we believe *also* that a distinction must be drawn: whether before the donation he establishes that the proceeds be retained by him for a time for a just and necessary cause; or whether he agrees with the one who receives the benefice, or with any intermediary, that, when that office has been granted, he retain the proceeds for himself. For we believe the first member to be lawful, but we say that the second is not lawful, lest we open a way to those who endeavor to cloak their depravity. [*But because, etc.* (*cf. c.* 9, *On the Office of the Archdeacon, I.* 23.) *Given at Perugia, on the ninth day before the Kalends of October.* 1198.]

Title XIII: On Whether the Property of a Church May Be Alienated

Chapter I

Latin source headnote: A prelate cannot give the property of one church to another, nor exchange their properties with one another, without the consent of both.

From the Fourth Council of Lyon.

It is not lawful for a bishop or abbot to transfer the land of one church to another, although both are in his power; nevertheless, if he wishes to exchange their lands, let him do so with the consent of both parties.

Chapter II

Latin source headnote: Secular princes cannot donate the property of a church, and those who receive it from them are excommunicated and lose everything that they otherwise lawfully held from the church. This it says according to one understanding, which is sufficiently pleasing.

From the same.

Those who seek the property of a church from kings and, by the impulse of dreadful cupidity, seize the substance of the needy, let the things they obtain be held invalid, and let them be excluded from the communion of the church whose resources they desire to take away.

Chapter III

Latin source headnote: A rector of a church who gives the church property of twice the value can manumit slaves of the church; nevertheless, the person manumitted and his descendants will be under the patronage of the church. It is commonly summarized thus, although Panormitanus does not approve what is said concerning the valuation.

From the Council of Toledo.

The consent of the whole council determined that priests who either leave something to their church or, having nothing, nevertheless acquire certain estates or households for their churches may manumit some persons from the household of that church according to the measure of the property conferred, as the ancient canons decreed, in such a way that, with their peculium and posterity, they remain *freeborn* under the patronage of the church, pursuing the services enjoined upon them according to their ability.

Chapter IV

Latin source headnote: If a prelate, giving nothing of his own to the church, manumits a slave of the church, the manumission is not valid.

From the same.

Let bishops who contribute nothing of their own to the church of Christ [*fear this divine sentence and*] not presume, to their own condemnation, to make free persons from the servants of the church. For it is impious that one who has not brought his own property to the church *of Christ* should inflict loss *and intend to alienate the right of the church.* Therefore, without any opposition, a successor bishop shall recall such free persons to the right of the church, [*because not equity but wickedness absolved them.*]

Chapter V

Latin source headnote: The property of a church ought not to be alienated.

From the Council at Senlis.

Let no one be permitted to alienate immovable property of his church, whether *a house or* a field, *a garden or* a rural slave [*or civic loaves,*] or to obligate it to *creditors* by title of a special hypothec. The word "alienation" includes a conditional grant, donation, sale, exchange, and a perpetual contract of emphyteusis. Hence let all priests [*altogether*] abstain from alienation of this kind, fearing the penalties that the constitution of Leo threatens.

Chapter VI

Latin source headnote: An alienation made concerning the property of a church is not valid, and the alienators, unless they restore the property, are excommunicated; any cleric can contradict and reclaim the property with its fruits. This it says, and the text is notable and is alleged daily.

Pope Symmachus.

If any of the priests, deacons, or defenders has subscribed to one alienating an estate of the church, let him be struck by the anathema by which an angered God strikes souls, *the punishment that we premised against the alienator being preserved,* unless perhaps both the alienator, *while he reclaims it,* and the person who received it provide for themselves by swift restitution. But if, with less care for their soul, they *perhaps* neglect the offered remedy, in addition to the penalty prescribed concerning this, let the instrument drawn up therefrom be emptied of force, although from the beginning it had none. But it is also lawful for any ecclesiastical persons to offer the voice of contradiction, and for them to be supported by ecclesiastical authority so that they can reclaim alienated things with their fruits. *But we wish the law of this constitution to be observed only in the Apostolic See, with the custom preserved in all churches throughout the provinces that their rectors see to accord with their profession of religion.*

Chapter VII

Latin source headnote: Unfertile land of a church can be given in emphyteusis to one by whose effort it may be reduced to cultivation.

Alexander III, to the Bishop of Worcester.

To the ears (*And below:*) But those lands that, cleared from woods, have been made arable, you will be able to grant under hereditary right, to be held under an annual payment, to those by whose labor, or that of their parents, it is established that *those lands* were cleared, unless perhaps they can then be conferred upon others with the same labor and burden for the greater utility of your church.

Chapter VIII

Latin source headnote: One swearing not to alienate the goods of the church cannot alienate those that are of the table, or those concerning which it is doubted whether they are of the table. This it says, as far as § *Possessions*. The Abbot.—(*Possessions, etc.:*) A bishop can, with the consent of the chapter, exchange or alienate possessions of the church that are less useful for more useful ones. This it says.

Celestine III, to the Archbishop of Ravenna.

So that *the doubt of a proposed question may be untied by the providence of the Apostolic See, the Roman Church, over which although unworthy we preside, has been accustomed to answer the consultations of individuals.* Indeed, you asked us whether the possessions or revenues of royal tithes, and those proceeding from other certain places, which your predecessor *of good memory,* until he closed his last day, held in his hands and took or expended for his own use, and did not enfeoff to others, are to be understood as belonging to *his* archiepiscopal table; and whether any contract of alienation can intervene concerning them when by the oath of fidelity you are bound to alienate nothing from the Apostolic See. Therefore, *by the present page,* we answer your inquiry in this manner: whether they are understood to be of the table or not, we consider it more prudent that they not be alienated. But we grant you free

faculty to alienate or exchange possessions that are less useful to your church for other more useful ones, with the counsel and assent of your brothers and of the sounder part *of the chapter.* [*You asked, etc.* (*cf. c.* 1, *On the Use and Authority of the Pallium, I.* 8.) *Given at the Lateran, in the third year.* 1193.]

Chapter IX

Latin source headnote: A canon cannot lease an estate of the church in perpetuity.

The same, to the Bishop of Exeter.

Know that it has come to our hearing that certain canons of the church of Exeter, without consulting the other brothers, leased in perpetuity certain estates of that *church,* to its harm *and their detriment, after receiving money therefrom.* Therefore, *by apostolic writings we command* your fraternity that, if what is asserted is true, you take care lawfully to revoke those leases, in such a way *indeed* that, if those estates cannot otherwise be recalled, you compel, appeal being removed, those whom you know to be the authors of these leases to refund to the lessees the money received therefrom, *lest, if leases of this kind happen to persist in their stability, grave disadvantage could thereby come to that church.*

Chapter X

Latin source headnote: Possessions that are of the table cannot be alienated. And churches accustomed to be governed by regulars ought not to be conferred upon secular clerics. This it says. John of Imola.

Innocent III, to the Archbishop of Monreale.

You ought not to alienate possessions pertaining to your table or that of the chapter, or assign to clerics or lay *persons* churches in which monks have been accustomed to minister. *Therefore, by authority of the present letters, we forbid your fraternity to grant to anyone seeking them possessions, villages, or churches that have not been accustomed to be assigned as benefices. Rather, you are not to delay, appeal being set aside, to recall to their former uses the Church of Saint Clement of Messina, which you are said to have conferred upon Gerard the Teuton; likewise the Church of the Holy Sepulcher of Messina, which you are said to have conferred upon Falcon the canon; and the benefice that you are said to have conferred upon Thomas, son of I. Ferrarius, to the grave prejudice of your church.* [*Given at Rome at Saint Peter's, on the eleventh day before the Kalends of June, in the first year of our pontificate.* 1198.]

Chapter XI

Latin source headnote: A church is restored against an alienation through which it was enormously injured. This it says according to the truer reading.

The same, to the Bishop of Moriana and the Provost of Ulcinj.

Know that it has come to our hearing that, when the monastery of Tusia was oppressed by the greatest burden of debts, *our beloved sons* its abbot and convent, compelled by necessity, granted a certain village in fief to the layman B., with this condition added: that the same *layman* should pay eighty pounds for which the same *village* had been obligated, which *he* did not delay to carry into effect. Hence, *because the aforesaid monastery, as they say, was enormously injured in this, in that from the revenues of the aforesaid village the convent was accustomed to receive one course on individual days, and fish or another equivalent on feasts of twelve lessons, they* humbly supplicated us that we cause the aforesaid fief to

be recalled for the utility of the monastery, especially since in the first year the same layman received from its proceeds beyond the aforesaid sum, and for many years afterward took its fruits. Therefore, *wishing so to provide for the burdens of the aforesaid monastery that we do not appear to inflict injury upon others, by apostolic writings we command* your discretion that, *after more fully inquiring into the truth,* if you find that the aforesaid monastery incurred enormous loss on this account, you compel the *often-mentioned* layman, *after previous admonition, by ecclesiastical censure,* appeal being set aside, to leave the aforesaid fief free and quiet to that monastery, once the money that he is known to have expended for discharging *the aforesaid* fief or even for the utility of that monastery has been received from the same abbot and convent, since the fruits received *until now* ought to suffice him for his labor. [*No letters, etc. Given at the Lateran, on the fourth day before the Kalends of April, in the ninth year.* 1206.]

Chapter XII

Latin source headnote: An alienation of ecclesiastical property made without the lawful assent of ecclesiastical persons is not valid, although approved by a constitution of laymen.

The same, in the General Council.

Since no power of disposing of the property of a church is attributed to laymen, however religious, whom the necessity of obeying awaits, not the authority of commanding, we grieve that in certain of them charity grows so cold that they do not fear to attack by their constitutions—or rather, destitutions—the immunity of ecclesiastical liberty that not only the holy Fathers but also secular princes fortified with many privileges, unlawfully presuming not only concerning alienation of fiefs and other possessions of churches and usurpation of jurisdictions, but also concerning mortuaries and other things that appear annexed to spiritual right. Wishing therefore concerning these matters to consult the indemnity of churches and provide against such great burdens, with the approval of the sacred council we decree that constitutions and sales of this kind, concerning fiefs or other ecclesiastical goods presumed without the lawful assent of ecclesiastical persons on occasion of a constitution of lay power—which can be called not a constitution but a destitution or destruction—and also usurpation of jurisdictions, are not valid, with the presumers to be compelled by ecclesiastical censure.

Title XIV: On Precarious Grants

Chapter I

Latin source headnote: It is brief and cannot be summarized more briefly.

From the Council at Beauvais.

Precarious grants shall be renewed from five years to five years according to authority and ancient custom.

Chapter II

Latin source headnote: A successor revokes a precarious grant unreasonably made by his predecessor.

From the Council of Carthage.

Concerning precarious grants unreasonably made by rectors of churches who bind themselves and their successors under a grave penalty so that they cannot dissolve their acts, we command that no successor be bound by the penalty of his predecessor, but that it be granted to his providence that, if his predecessor unreasonably distributed the property of the church, it be recalled by him to the right of that church.

Chapter III

Latin source headnote: The grant of a loan for use is extinguished by the will of the grantor or his successor; but the grant of a precarium is not.

Gregory IX.

A thing loaned for use is granted for as long as the one who granted it permits. It is also dissolved by the death of the one to whom it was granted, but not by that of the grantor; or when it happens to be alienated to someone wishing to revoke it, because by an agreement of this kind it is not lawful for another's property to be possessed against the owner's will. But precarious grants that are sometimes customarily made from possessions of churches are not to be revoked at the will of the grantors.

Title XV: On Loan for Use

Sole Chapter

Latin source headnote: A borrower for use who receives solely for his own benefit is liable even for the slightest fault, but not for accident except in the three cases placed here. And a loan for use is not revoked before completion of the use. This it says.

Gregory IX.

When someone receives a loan for use solely for his own benefit, he is liable even for the slightest fault, although a fortuitous accident ought not to be imputed to him unless it occurred through his fault, or an agreement intervened, or he was in delay. Nor is an action on loan for use rightly brought against him except after completion of the use for whose sake the thing had been lent, since it behooves us not to be deceived but to be assisted by a benefit.

Title XVI: On Deposit

Chapter I

Latin source headnote: A church is not liable for a deposit made with a cleric of the church unless it was turned to the utility of the church.

Alexander III, to the Bishop of London.

That grave *and hateful* complaint *which* has reached us concerning your deposit hitherto denied to you *constrains us with twofold anxiety, in that we can neither fail you in this nor effectively assist you as you would wish.* For since it is not established *to us* that your money, which that man of Belial stole by *impious and detestable surreption,* was turned to the utility of the church, we ought not by law, *nor can we,* direct a peremptory insistence of command against the canons of that church that they return to you the same money, committed, *as is said,* to a person, not to the church. Therefore, *we counsel your discretion,*

and with the diligence of inward charity persuade you to direct your action *meanwhile* against that *robber and* thief, because, as we have heard, he has the purses and carried away the things stolen from you. For *we ourselves* also commanded judges to bring that wicked man to account under *severe* examinations and, *even* if necessary, to torment *and afflict* him, bound with chains, so that he may be compelled to return the said money. *But we wish you to have such affection toward the church that you seek nothing undue from it*. If, however, you can amicably make an agreement with them concerning receipt of revenues, know that this is acceptable to us.

Chapter II

Latin source headnote: It states for what a depositary is liable and how a deposit is reclaimed.

Gregory IX.

Good faith is presumed absent if, while your own property remained safe, you lost the things deposited. You are also liable for fault if you offered yourself for the deposit, or if you received something for safekeeping. But when agreement, fault, or delay has preceded, even a fortuitous accident is imputed. Indeed, it was lawful for the depositor to revoke the deposit at his own will, against which there was no place for setoff or deduction, so that a contract that arises from good faith may in no way be referred to bad faith, although setoff is admitted in other matters if the cause from which it is sought is liquid in such a way that it is believed to have an easy outcome.

Title XVII: On Purchase and Sale

Chapter I

Latin source headnote: A bishop compels that goods not be sold more dearly to travelers than they would be sold in the market.

From the Council at Valence.

It pleased [*us and our faithful*] that priests admonish their peoples that they too be hospitable, [*that they deny lodging to no traveler,*] and, [*so that every occasion of robbery may be removed,*] that they not sell more dearly to travelers than they can sell in the market; otherwise, let the travelers report this to the priest, so that at his command they sell to them with humanity.

Chapter II

Latin source headnote: One who falsifies measures and weights ought to do penance for thirty days on bread and water.

From the Council of Mainz.

So that measures and weights may be just, *as has been enacted in the divine laws, is contained in the lordly capitulary, and is established by this sacred assembly, thus it pleases all of us to observe. And* if anyone has presumed to alter just measures and just weights for the sake of gain, let him do penance for thirty days on bread and water.

Chapter III

Latin source headnote: A sale is valid although the seller was deceived beyond half the just price; nevertheless, the seller can bring an action so that the thing is restored or the just price supplied, and if he seeks one of them peremptorily, he fails.

Alexander III, to the Bishop of Arras.

When *our beloved sons* the canons of Beauvais proposed a complaint against the *religious men,* the abbot and brothers of Chaalis, that they had purchased from certain of them, while the chapter was ignorant, for ten pounds the forest called Black Valley, then worth forty marks, *after many commissions we finally* committed the cause itself, *under a certain form,* to *our venerable brother* the Bishop of Thérouanne and *our beloved son* the Dean of Reims to be terminated, adding *in the letters* that, if each could not be present for cognizance of *that* cause, the other, *associating with himself prudent and honorable men,* should not delay to proceed in the same business. *Therefore, when the dean summoned the parties to his presence on this account, the abbot and monks sent messengers not to act or answer but to seek delays, asserting that they had sent to us and appealed to our hearing. But because appeal had been removed in the letters,* the dean finally proceeded in cognizance of that cause. And when it was established to him through witnesses *of the canons of Beauvais* that the aforesaid brothers had purchased the forest for less than half the just price, he pronounced that the sale was not valid and, adjudging *the forest* to the church of Beauvais, inducted the canons into possession. *Therefore, when messengers of both parties were constituted in our presence on this account, and confirmation of the sentence by apostolic authority was insistently and earnestly sought on behalf of the canons, after deliberation with our brothers and other wise men who, sworn to the laws, give judgment, we understood that sentence to be contrary to law.* But because it is in the choice of the purchaser, when a thing is bought for less than half the just price, whether he wishes to supply the just price or rescind the sale, annulling that sentence as contrary to law, we adjudged that possession should be restored to the monks, saving to the canons *every* question concerning deception in the price, lack of consent of the chapter in the sale, or any other reasonable cause that the canons should determine to propose against the monks.

Chapter IV

Latin source headnote: If a husband has other goods from which a wife can provide for herself, and with the wife's consent sells a thing donated to the wife on account of marriage, the wife cannot trouble concerning it a purchaser who possessed the thing for a period of thirty years, especially if the price was turned to the common use of husband and wife. This it says according to the understanding held by Panormitanus, and it is a notable case limiting civil law. According to John Andrew, it is unnecessary to add "especially," but all three things are necessarily required.

Celestine III.

It has come to us *from your intimation* that *formerly* P. the knight sold to the woman B., for a certain quantity of money, a certain house assigned to his wife A. as a donation on account of marriage, with the woman herself giving express consent, *which B. possessed freely and peacefully from that sale for thirty years while the aforesaid marriage endured.* But when the aforesaid knight entered upon the way of all flesh, his widow presumes to proceed against this, alleging that the said house, granted to her by title of donation on account of marriage, could not have been alienated, although her consent is known to have acceded to that contract. But the aforesaid *woman* B. endeavors to protect herself on the ground

that for thirty years, while their marriage endured, she possessed the house itself in good faith and under a just title; that its price was turned to the common uses of that husband and wife; and that at the time of the sale there existed among the husband's resources that from which the aforesaid woman could *advantageously* provide for herself. Therefore, because you took care to consult us concerning these things, we answer *your solicitude* that, if the things we have premised are true, the aforesaid purchaser ought not to be further troubled concerning that house on the aforesaid occasions.

Chapter V

Latin source headnote: If in a sale an agreement is added concerning recovery of the thing after a certain time, with a small price established, a pledge and not a sale is presumed.

Innocent III, to the Bishop of Patti.

Know that it has come to our hearing that, when the layman R., bearer of the present letters, wished to receive a loan from M., the creditor *of the diocese of Trani,* lest in the future he could be sued under the canon issued against usurers, received from him by title of purchase *his* houses and olive trees, when in truth a usurious contract was being transacted. This is apparent from the fact that the creditor, *as the public instrument contains,* promised the debtor that, whenever between the seventh and ninth years he should give forty ounces of tarins, which scarcely attained half the just price, he would restore his houses and olive trees. Therefore, because fraud and deceit ought to furnish patronage to no one, *by apostolic writings we command* your fraternity that, if the matter stands thus, notwithstanding the instrument of sale drawn up in fraud of the canon promulgated against usurers, you compel the aforesaid M., by the penalty promulgated against usurers in the Lateran Council, appeal being removed, to restore *the aforesaid* houses and olive trees to him upon whom they ought to devolve by hereditary right, since the debtor has entered upon the way of all flesh. [*Given at the Lateran, on the fourth day before the Nones of March.* 1203.]

Chapter VI

Latin source headnote: A seller deceived beyond half the just price can bring an action so that the thing is restored to him upon returning the price received, or that the just price is supplied; and in this the choice belongs to the purchaser. This it says according to Antonius.

The same, to the Bishop and Archdeacon of Urbino.

When the cause disputed between the steward of the monastery of Saint Martin on the Mount *of Viterbo* on one side, and *F. and R.,* citizens of Viterbo, on the other, concerning the tenements *formerly of Tornaparte, the lands of Densiare, the willow groves, and the mill where the fullery was made,* had been debated *before us* for some time, *we, having understood the reasons of both parties and diligently inspected the attestations,* since it was established to us that *the monastery* had been deceived beyond half the just price in the sale *of the aforesaid things,* decreed by sentence that the aforesaid citizens either restore the aforesaid possessions upon receiving the price, or supply as much as was established to have been lacking from the just price at the time of the lawful sale. *Therefore, when* (*cf. c.* 42, *On Witnesses, II.* 20.)

Chapter VII

Latin source headnote: It sets forth three cases in which, after the thing has been evicted, the seller is not liable to the purchaser for eviction.

Gregory IX.

If, after judgment was instituted against the seller, someone omitted to notify him to defend the thing sold to him, or was contumaciously absent at the time the sentence was promulgated, or the sentence was issued through injustice, he will not be able to bring an action concerning eviction according to the lawful sanctions.

Title XVIII: On Letting and Hiring

Chapter I

Latin source headnote: Masters and scholars at Bologna who, before the term of the letting, hire the lodgings of other masters or scholars without their consent are excommunicated.

Clement III.

It became known to us from the rescript of the letters of P., formerly Bishop of Tusculum *of pious memory,* that, when he entered the city of Bologna during the time of his legation, *he found that it had been established there by W., formerly Bishop of Porto of good memory, and forbidden under excommunication, that any scholars* [*of others*] *should hire lodgings by the promise of a greater rent, so that they might claim them for themselves either from zeal for empty glory, wishing to appear more powerful in expenditures, or for the advantage of private utility. Hence he himself, considering with solicitous providence that the wickedness of a condition of this kind would engender both a tinder of discord and no small impediments to studies,* decreed valid the constitution made by the Bishop of Porto, legate of the Apostolic See, and afterward confirmed by the aforesaid Bishop of Tusculum, namely: that none of the masters or scholars should dare to make an agreement with a landlord concerning the hiring of others' lodgings, to the injury or prejudice of the inhabitants, unless it was first established that the term of the letting had elapsed or the tenants had furnished their favor and consent in this; since the Bishop of Porto forbade this under excommunication, and the other decreed the same to be observed under penalty of anathema. We confirm *it* by apostolic authority, establishing that this be recited each year by you, brother bishop, and by every successor of yours, in a common hearing of the masters and scholars, *and that the aforesaid wickedness of an improper hiring be expressed by a renewed* [*each year*] *sentence of excommunication. Therefore, let it be lawful for no person whatsoever to infringe the page of our confirmation, etc.*

Chapter II

Latin source headnote: Ecclesiastical persons can lease the proceeds of tithes to those with whom the condition of the church is made better, notwithstanding a contrary statute of the diocesan; and the same reasoning applies to other property of the church.

Innocent III, to the Abbot and Convent of Saint Peter of Préaux in the Diocese of London.

Your report declared to us that, although you have been accustomed to give the fruits of your tithes at farm, *the diocesans of the places issued a certain statute concerning tithes of this kind to be leased to parish priests, by which your utility is not a little impeded; wherefore you implore concerning this the remedy of apostolic*

provision. Notwithstanding a contrary statute of the diocesan bishops, you can freely lease the proceeds of your tithes to those *whom you see to be expedient for you and* with whom you will be able to make the condition of your church better, yet in such a way that a letting of this kind does not appear to extend to a fief or alienation.

Chapter III

Latin source headnote: On account of grave sterility happening to the lessee without his fault, the rent is remitted proportionally, unless it can be set off against the abundance of the preceding or following period. This it says as far as § *But.*—(*But, etc.*:) Four cases are placed here in which a tenant can lawfully be expelled before the term of the letting has ended. The Abbot.

Gregory IX.

On account of sterility affecting the lessees with great disadvantage, happening through a defect of the property without fault of the cultivator or by a fortuitous accident, remission of rent is to be made proportionally to the cultivators of your church, unless the sterility can be set off against the abundance of the preceding or following year. But you will be able, against the tenant's will, to inhabit or repair the house if necessity—which nevertheless was not imminent at the time of letting—requires it, with the rent for the remaining time remitted to him. He is also reasonably removed therefrom if he conducted himself wickedly there, or, when he had not paid the rent for two years, did not provide for himself by swift satisfaction.

Chapter IV

Latin source headnote: An emphyteuta of a church cannot sell his improvements unless the things stated here are observed. And if he acts contrary to them, or has not paid the rent for two years and has not afterward swiftly purged the delay, he can justly be expelled.

The same.

An emphyteuta, after first asking the church and notifying it how much is offered to him by others, could sell his improvements and the right belonging to him to others who are in no way prohibited from a purchase of this kind, if the church said that it was unwilling to buy or if the space of two months elapsed from the time of notification. An emphyteuta also, by presuming otherwise or ceasing payment of the rent for two years, unless he afterward endeavored to provide for himself by swift satisfaction, could justly be expelled, notwithstanding that he was not notified to pay the rent, since in this case the appointed day makes demand for the lord.

Title XIX: On Exchange of Things

Chapter I

Latin source headnote: A prince can acquire immovable property of a church by exchange, after giving better or equal property. This it says, and in what it says, "or equal," there is a notable case.

From the Council at Silvanum.

If a prince wishes to furnish immovable property to holy places and receive from them another immovable *thing,* and in that manner contract an exchange by common will, it is lawful for him to do

this if a reasonable cause requires it and the thing that he furnishes is greater or equal, a *divine* pragmatic sanction concerning this having been promulgated *by him*.

Chapter II

Latin source headnote: An exchange of ecclesiastical property made in a case not permitted, or without observance of the solemnity of law, is to be revoked by a successor.

From the Council of Beauvais.

Let exchanges of ecclesiastical property *be guarded against greatly and, if in any way they ought to be made, inspected most subtly;* but those that were made imprudently by a predecessor *according to the canonical decree of Pope Hilary, or were unlawfully committed by others,* shall be corrected by the one who is successor.

Chapter III

Latin source headnote: Slaves of a church ought not to be exchanged except for freedom, or unless they are fugitives. This it says together with the following chapter.

From the Council at Senlis.

It is not fitting that ecclesiastical slaves be exchanged except for freedom, namely, so that the slaves who are given for an ecclesiastical man remain in servitude to the church, and the ecclesiastical man who is exchanged enjoy perpetual freedom. For that which has once been consecrated to God ought not *now* to be transferred to human uses.

Chapter IV

Latin source headnote: Slaves of a church cannot be exchanged with profane persons or alienated unless they are fugitives.

From the same.

It appears unjust and impious that slaves whom faithful *men or women* consecrated to God and his saints for the remedy of their soul should, for slavery to any gift or by commerce of exchange, again be reduced to the servitude of secular persons, since canonical authority permits only fugitive slaves to be sold. Therefore let *all* rectors of churches take the greatest care lest the alms of one become the sin of another. And it is absurd that a slave departing from ecclesiastical dignity should be subject to human servitude.

Chapter V

Latin source headnote: Prebends cannot be exchanged when an agreement precedes; nevertheless, a bishop can exchange persons from place to place.

Urban III.

It was asked on your behalf whether exchanges of prebends can be made, since exchange of dignities was interdicted in the Council of Tours. *For there are certain persons who yield their prebend and renounce their right so that they may obtain a greater prebend or thereby obtain a certain sum of money, which indeed is contrary to honor and undoubtedly contains simoniacal depravity.* Therefore hold generally that exchanges of prebends cannot be made by law, especially when an agreement has been sent beforehand, which

concerning spiritual things or things connected with spiritual ones always contains the stain of simony. But if the bishop has inspected a necessary cause, he will lawfully be able to transfer persons from one place to another, so that those who are less useful to one place may be able to exercise themselves more usefully elsewhere.

Chapter VI

Latin source headnote: Churches can be exchanged with one another by right of ownership, and their possessions can also be exchanged, and a price can be supplied for those of lesser value.

Clement III.

For resolving questions [*that are extended to the Apostolic See by our brothers and fellow bishops, it befits us to apply solicitude according to the duty of our office.*] We have understood *therefore* from your letters that two conventual churches are constituted in your diocese, each of which has a parish church with possessions nearer to the other than to itself. But because they desire to exchange them, and one of them abounds more by reason of better revenues, and therefore requests that a certain sum of counted money be added to *its church* so that they may thus be able to arrive at equality of exchange, it was doubted whether this could lawfully be done; *for which reason you wished to consult the Apostolic See. Therefore, although we in no way think that the industry of your discretion is ignorant of what is to be done concerning that matter, nevertheless* we answer [*thus*] *your prudence:* since an exchange can be celebrated concerning the *aforesaid* parish churches by themselves, and in an exchange of possessions it is not forbidden by itself, if one outweighs the other by reason of possessions, for money to be refunded also from their possessions to one another, as shall appear expedient, a contract of exchange can be entered after a certain quantity of money has been refunded, yet in such a way that those contracts are in no way mixed with one another.

Chapter VII

Latin source headnote: Those who exchange their benefices by their own authority lose them.

Innocent III, to the Archbishop of Sens.

When formerly *it came to our hearing that our beloved sons* Master S. and B. had exchanged an archdeaconry and a provostship with one another, *at the request of that master* [*B.,*] *we thought that the cause concerning this should be delegated to the Bishop of Mâcon of good memory. And when that same B. afterward approached our presence, so that the business might proceed without suspicion, at his request we thought that our beloved son the Abbot of Cluny should be joined to that bishop. But because, on account of the abbot's absence, the delegated judges had not proceeded together in the cause, each party presented itself to our sight and obtained a hearing before us. And* although the aforesaid master from the beginning voluntarily confessed the exchange, that same B. nevertheless wholly denied it, *assertively* alleging that *both* he had resigned the provostship without any condition, and after the *free* resignation of the aforesaid master had obtained the archdeaconry; *although the master himself* [*G.*] *alleged in opposition that B. had treated with him at length concerning the exchange and finally completed in the hands of our venerable brother the Bishop of Autun what he had treated.* (*And below:* [*cf. c.* 33, *On the Office of a Delegated Judge, I.* 29.]) Therefore, when it was established to us, *both through public report and through valid presumption and even manifest proof,* that B. himself furnished his assent to the exchange, while the aforesaid master publicly confessed his error, we took care to despoil the one of the provostship and the other of the archdeaconry, issuing

concerning this a definitive sentence against them. [*But finally, etc. Given at the Lateran, on the Ides of January, in the fifth year.* 1203.]

Chapter VIII

Latin source headnote: If an exchange of benefices has been completed on one side, and it is due to the other that it is not fulfilled, the party is restored to his benefice, and to this extent the law contains this.

The same, to the Archbishop and Provost of Saint Andrew of Cologne.

Since pastoral care of all *the faithful has been committed to us by the Lord Jesus Christ himself, it is known to be expedient for our solicitude that we ought so to support all persons in their reasons that the rights of some do not sustain loss in the sight of the church, but ought to remain firm and unimpaired.* We have understood, *from the report of our beloved son* G., a canon *of Saint John in Liège,* that, when he and the cleric L., *led by a certain lightness of mind,* began to treat between themselves concerning an exchange of their prebends, which they believed to threaten the utility of each, nevertheless, *on occasion of the said exchange,* after the prebend of that G., *which he had had in the church of Saint Mary of Namur,* had been assigned to a certain kinsman of his, that same *cleric* L. was unwilling to resign his prebend to G. as he had promised, *and thus the same G., as he asserts, remained altogether frustrated of his hope. And when there had been litigation concerning this for a long time in the presence of our venerable brother the Bishop of Liège, that same L. finally appealed to the Apostolic See; and when the said G.* [*approached our presence*] *not without great danger and labor, the same L. neither came nor took care to send a sufficient respondent on his behalf.* Therefore, since the laws assist those deceived and not those deceiving, and fraud and deceit ought to furnish patronage to no one, although by themselves they could not by law exchange ecclesiastical benefices, nevertheless, so that pardon may be granted to simplicity, *by apostolic writings we command* your discretion that, if it is established that the aforesaid G. was thus deceived, after removing from his prebend, *which he is said to have possessed for a long time,* the kinsman of L. himself or any other unlawful holder, you cause it, *with the obstacle of appeal removed,* to be restored to him *and cause him to enjoy its peaceful possession* [*etc.*]

Chapter IX

Latin source headnote: A spiritual thing cannot be exchanged for a temporal thing.

Gregory IX, to the Abbots of Bél and Pannonhalma.

A petition exhibited to us by [*our beloved sons*] the abbot and convent of Saint Martin of Pannonia contained that, when concerning the cause disputed between them on one side and the Provost of Alba on the other concerning certain tithes [*and a certain arbitral award issued concerning them,*] [*after diverse commissions to our beloved son E., subdeacon,*] they obtained our letters to C., our chaplain then dwelling in Hungary, [*finally*] he and Master M., [*Archdeacon of Sásvár,*] to whom on each side, [*with the other party procuring it,*] the matter was submitted as to arbiters, [*thus*] arbitrated: if the said provost obtained from [*our dearest son in Christ, the illustrious*] King of Hungary that ten thousand royal solidi [*which they hold at Pressburg*] be granted [*by him*] to the aforesaid monastery, [*in such a way that in the same place they should place its aforesaid abbot and convent in possession of the aforesaid salt revenues,*] they would cease from seeking the same tithes. [*But afterward, although the king himself granted those salt revenues to the said monastery by his letters, nevertheless the aforesaid provost and chapter, neither at the appointed term nor after it, though awaited through many other terms, gave them possession of those salt revenues; although*

the aforesaid abbot, after first protesting that he had not been inducted into possession by them, induced by the requests of certain persons and compelled by certain threats and terrors, received fifty marks of Friesach money for the revenue of the salt for one year. And when, after a further space of a year had been granted to them, they determined to wait uselessly as before, finally, after manifold complaints, he issued the voice of appeal to us, fixing for himself as a term the octaves of the blessed Apostles Peter and Paul most recently past. Finally constituted in our presence, he humbly supplicated that, since the same provost and chapter had not obeyed the condition contained in the arbitral award, we command, notwithstanding it, that answer be made in full to that monastery concerning the aforesaid tithes.] Therefore, [*by apostolic writings we command*] your discretion that, if the foregoing is established to you, since an exchange of spiritual things for temporal things is disapproved, you, [*by our authority without the loss of delay and with the impediment of appeal removed,*] decree invalid the aforesaid arbitral award and whatever followed from it or on account of it, [*and afterward concerning the tithes, etc. Given at Rieti, on the thirteenth day before the Kalends of November, in the fifth year.* 1231.]

Title XX: On Fiefs

Chapter I

Latin source headnote: If a lord receives a fief from a vassal in pledge, abstaining from his service, he is not bound to compute the fruits toward the principal. This it says according to the common understanding, and it is a singular case not read elsewhere.

Innocent III, to the Bishop of Marsico.

By the intimation of the present letters, we declare *to you* that the pledge which you are known to have received from M. concerning a fief of your church, *with the consent of his brother Wifred acceding,* can be freely retained by you without the fruits being computed toward the principal, namely, in such a way that, for as long as you receive those fruits without their being computed toward the principal, that same M. is meanwhile immune from the service in which he is bound to you and your church for the fief itself. [*Given at Rome at Saint Peter's, on the Kalends of March, in the ninth year of our pontificate.* 1206.]

Chapter II

Latin source headnote: It sets forth three cases in which, notwithstanding an oath not to enfeoff, a bishop can grant to a new vassal an ancient fief reverted to the church. This it says, and it is a notable case interpreting the oath concerning alienation.

Innocent III, to the Archbishop of Milan.

It was disclosed to our apostolate on your behalf that you have often doubted whether, when it happens that your vassal dies and his fief reverts to you, it is lawful for you to give his fief to another, although you are bound by oath not to enfeoff anew without consulting the Roman Pontiff. Furthermore, if it should happen that your vassal alienates a fief, whether you can invest his son or kinsman, a partner in that fief, with it. Another *of your* doubts also contained whether, when you find an alienated fief that you cannot easily recover by yourself, you can grant that fief to a layman who may both recover it and acknowledge it as a fief through the church. (*And below:*) Therefore, in the first case, freely grant the fief of the deceased if you see it to be expedient; in the second, invest the son or kinsman of the alienator; and in the third, you will lawfully be able to grant the alienated fief

to him through whom the church itself can recover it. [*Given at Ferentino, on the tenth day before the Kalends of November, in the eleventh year of our pontificate.* 1208.]

Title XXI: On Pledges and Other Securities

Chapter I

Latin source headnote: Property of a church ought not to be pledged except from necessity and for a reasonable cause.

From the Council of Reims.

Let no priest presume to give a chalice, paten, *altar cloth,* priestly vestment, or ecclesiastical book as a pledge to an innkeeper, merchant, or any layman or woman, unless the most just necessity presses, [*because so great is the sanctity of the sacred ministry, etc.*]

Chapter II

Latin source headnote: A free man cannot be pledged.

Gregory III, to the Bishop of Exeter.

The bearer of the present letters, [*Cosmas the Syrian, reported that he contracted a debt in the business he conducted, which, with many others and his tears attesting it, we believed to be true. And because he owed one hundred and fifty solidi, I wished his creditors to agree upon something with him,*] *because also* the law holds that a free man is not to be detained for a debt, even if property that can be assigned for the debt is lacking. *Therefore the creditors, etc.*

Chapter III

Latin source headnote: If a rector of a church obligated property of the church for his own act, his heir is compelled to redeem the property and restore it to the church.

Alexander III, to the Bishop of Exeter.

We received from the intimation of the bearer of the present letters that *Alexander, formerly* priest of the church of Offiton, pledged a [*certain*] silver chalice and half of one breviary of that church for his own necessity, and, overtaken by death, did not recover them. Hence, because it is unworthy that its property, *and* especially things assigned to sacred ministries, ought thus to perish from the same church, *by apostolic writings we command* your fraternity that, if what is asserted is true, you diligently admonish *and* compel his son *Walter,* who is said to obtain a right from succession to his patrimony, to recover those things and restore them to the aforesaid church. *But if he is unwilling to do this, do not delay to restrain him with the bond of anathema.*

Chapter IV

Latin source headnote: If a usurer buys a thing under an agreement that after a time he will restore it to the seller, receiving something beyond the principal, but with its fruits computed toward it, the contract is adjudged a loan at interest.

Innocent III, to G., Our Subdeacon, and P., Canon of Pisa.

We believe you to flourish with that gift of knowledge *by which you clearly know what the law is concerning that about which you wished to consult us. Nevertheless, because you petitioned to be instructed by our response, lest decision of the business be prolonged under expectation of that response, we thought that we should answer you by the present letters.* Indeed, you intimated to us *by your letters* that, *when* we thought that the cause disputed between H. and B., sons of G. de Cosa, on one side, and G., daughter of Tebert, and her heirs on the other, concerning certain lands pledged to the aforesaid persons for twenty-three pounds, should be committed to you, *giving you a mandate by our letters that you take care, by the penalty promulgated against usurers in the Lateran Council, to compel G. herself and her heirs to restore to the complainants the vineyards and whatever they had received from them beyond the principal, you took care to cite the parties so that you might proceed in the aforesaid business according to our mandate. And when they were constituted in your presence,* it was proposed *before you* on behalf of the aforesaid G. and her heirs that the lands that H. and B. sought from them were not obligated as a pledge but sold purely, as was contained *more fully* in the instrument drawn up therefrom. But the aforesaid H., on behalf of himself and his brother, firmly asserted that the lands were not sold purely but obligated as a pledge, since such a condition had been added to the aforesaid sale: if from the time of the contract until the next two years the purchase displeased the aforesaid T., G., father of H., ought from then until *one* year to give twenty-six pounds, with the fruits received computed in them, *as he firmly asserted was contained in the same instrument.* But because, *as you indicated in the same letters,* you doubt whether it is a pure and absolute sale or the aforesaid contract ought to be adjudged a pledge, *you petitioned to be instructed by our letters. But we* answer your consultation in this manner: whatever the intention of the contracting parties was, and although from the form of the contract the sale appears not conditional but pure, even if it can be dissolved by a condition, nevertheless from the two things that were expressed in the agreement—namely, that the fruits received ought to be counted in payment of the money, and that sixty solidi ought to be paid beyond the sum received—a strong presumption arises against the purchaser himself, especially since he has been accustomed to practice usury *and commit the fraud of usury.* [*Given at Ferentino, on the fifth day before the Nones of July.* 1203.]

Chapter V

Latin source headnote: A woman proceeds for her dowry against anyone detaining the husband's goods.

The same, to the Bishop of Aquino.

We received from the letters of your fraternity that, *when* we thought that the cause disputed between R. *of* [*Saint*] *George* and the woman A. [*of Saint*] *Germano* should be committed to you, *when for almost two years you had endeavored that the cause be ended by agreement, but the parties did not acquiesce, after summoning prudent men and examining more diligently the merits of the aforesaid cause, you thought, by the counsel of prudent men, that the same business should be remitted to our presence, especially for this reason: that it appeared specially to pertain to royal judgment.* Indeed, it was *clearly* proved that, after an offense was committed by the husband of the aforesaid woman and he sought flight, both the husband's brother, namely, the aforesaid R., and the woman herself, although less justly, were captured by R., then Count of Caserta and royal justiciar; and that at his mandate all the goods of the offender *were* sold, and money [*was*] paid to the merchant who had been wounded by the husband of *the said* woman and despoiled of his own goods. *But the sale of those goods was made through the aforesaid R., although at the mandate of the aforesaid justiciar.* Yet certain possessions of that man remained with the same R., *the*

woman's brother-in-law, which that *R.* retained at the mandate of the court, after paying money for them to the aforesaid merchant, because, *as he says,* no other purchaser existed on account of the smallness of the possessions. But the woman's party *firmly alleged that, since a dowry is preferred to all creditors, and all the husband's goods were obligated to that woman on account of her dowry, since the woman was not culpable in this, she ought not to lose her dowry; on this account* she insistently sought that the valuation of the dowry be restored to her, or that by virtue of the delegation she be inducted into the possessions that had belonged to her husband, *asserting that her husband's fault ought in no way by law to harm her. But the man's party answered to the contrary that he was not bound* [*to her*] *to answer in any way concerning these things, because nothing had been sold from the goods of the woman's husband by his will or authority, but the fisc had caused them to be seized and commanded them to be sold, which he also proved by the assertion of witnesses. Indeed, when the woman's party said that some possessions of her husband remained that had not been sold, and petitioned to be satisfied from them, you diligently inquired of each party how great the sum of money was that had been paid to the merchant, and from the confession of each it was established to you that immovables up to twenty-four ounces of gold had been alienated. But the aforesaid R. said that he had added eighteen* [*ounces*] *to those twenty-four ounces and completed for the merchant the number of forty-two ounces of gold. The aforesaid R. also alleged that, since there were five sons of one father and all succeeded to the paternal goods, when the whole inheritance had been valued, nothing came to the husband of that woman from the paternal inheritance worth beyond twenty-four ounces of gold.*

But because the same cause remitted to us was not sufficiently instructed, nor was it established to us whether the woman had given as dowry the ten pounds of tarins that she sought, or whether R. himself possessed anything from the goods pertaining to his brother, the husband of the aforesaid woman; nor could we have insisted upon examination of the cause, both because, as you say, allegations and proofs had been renounced in your presence, and because suitable and sufficient respondents had not come to our presence: we thought that the same cause should be remitted to your examination. By apostolic [*writings we command you*] that, if it is established to you from the things proposed and proved in your presence that the woman gave to the man as dowry what she says and that the aforesaid R. possesses some of his brother's goods—since much favor is owed to women in recovering dowries, and it is *also* provided in law that a woman ought not to remain without dowry on account of the wrongdoing of her husband, since the husband's goods are also tacitly obligated to the woman for her dowry and have passed with their burden to any possessor—you condemn the aforesaid R., *appeal being removed,* to restitution of the dowry to that woman to the extent that he is known to possess goods of his aforesaid brother. [*Given at Rome at Saint Peter's, on the second day before the Ides of February.* 1205.]

Chapter VI

Latin source headnote: If the creditor, or one who has a cause from him, has received so many fruits from the pledge that the principal has been satisfied, the pledge ought to be restored to the debtor.

The same, to R. of Montefortino.

When you moved a question in our presence against *the noble man* G., a citizen of Anagni, concerning certain possessions that formerly L. de Saul, your father, had obligated for a certain quantity of money and the heirs of that creditor had pledged to the aforesaid G., *we appointed for you and him as auditor our beloved son P. de Saron., our subdeacon and chaplain. Therefore, constituted in our presence,* you lawfully proved that *the possessions themselves had been obligated by title of pledge,* and that so much had

been received from their proceeds, both by that G. and by others who held them from the time when they were obligated, that the fruits could be equated with the principal. We therefore, attending that in such matters receipt of the fruits accrues toward payment of the principal, since according to the canonical sanctions the fruits ought to be restored and computed toward the principal, and also considering that the possessions themselves had already wholly exhausted the entire burden and annulled the debt, *by the counsel of our brothers* decreed that they were to be restored to you, and caused you to be inducted into corporal possession through our messenger.

Chapter VII

Latin source headnote: If one who pledged his property under an agreement of a forfeiture clause and swore not to contravene was justly impeded from redeeming it within the appointed day, he will be able to redeem it after the day.

The same.

It became known to us from the signification of *our beloved son* R., a citizen of Pisa, that, when he had pledged his house *with a garden* to G., a citizen of Pisa, for two hundred and fifty pounds, and had promised under oath that, unless he recovered the house itself within the term appointed *between them,* he would not thereafter trouble *the same* creditor concerning it, within the appointed time he remitted counted money to the creditor through a certain and faithful messenger, as it appeared to him. Acting unfaithfully, that messenger did not pay it as had been enjoined upon him, and afterward the same R., *captured and* detained by the emperor, could not satisfy the said G. as he ought. *Now, restored by God's grace to his former liberty, he is prepared to return the money to the creditor, although the latter wholly* refused [*to receive it,*] *because it was not paid to him at the appointed term.* Therefore, since an agreement of a forfeiture clause is disapproved in pledges, and the aforesaid R., insofar as it lay with him, fulfilled the debt of his oath, since through one whom he hoped to be a certain [*and faithful*] messenger he remitted the money at the appointed term, but, *while* detained in *imperial* captivity, could not satisfy the creditor, *by authority of the present letters we command* your discretion that, if it is thus, you compel by ecclesiastical censure, *after previous admonition and with the obstacle of contradiction and appeal removed,* the aforesaid creditor to be *content with his* principal, with the revenues of *the aforesaid* pledge computed toward it, and to resign *that house and garden* to the aforesaid R., every delay being set aside, notwithstanding such an agreement or oath. [*Given at the Lateran.* 1198.]

Chapter VIII

Latin source headnote: A usufructuary gives security that he will enjoy immovable things with their substance preserved, and, when the usufruct has ended, restores the money and valuation of movables that are consumed by use.

Gregory IX.

Since it is established that the woman I., wife of Ogerius, succeeded her son as to usufruct in goods whose ownership is known to pertain to the woman M., wife of C., we command that you compel her by ecclesiastical censure to exhibit suitable security that, according to the judgment of a good man, she will use and enjoy immovable things that are not consumed by use with the substance of the things preserved; but that she will restore at her death to the said woman or her heirs the money, if

she had or shall have any, and the valuation of goods that are consumed by use and were found in the inheritance.

Title XXII: On Sureties

Chapter I

Latin source headnote: It is brief and cannot be summarized more briefly.

From the Council of Canterbury.

Let a cleric serving in suretyships be cast out.

Chapter II

Latin source headnote: A cleric is compelled to preserve a surety harmless through assignment of his revenues.

Lucius III, to the Bishop of Ely and the Archdeacon of Norwich.

It came to us from the complaint *transmitted to us* by R., a cleric *of Saint Albans,* that, when at their insistence he became surety for C. and F., clerics *of London—for one of them, namely Elias, in six, and for the other in seven additional marks of silver—to merchants of Bologna,* and they did not pay the aforesaid money *as one had promised under faith and the other under oath,* he was compelled *to satisfy the aforesaid creditors for them, as had been agreed between them,* concerning it. Therefore, lest *the aforesaid R.* suffer loss whence he appears to have deserved reward, we commanded *our venerable brother I.,* Bishop of Bologna, to inspect the instruments concerning those debts that are with the creditors and not delay to send you transcripts of them marked with his seal. Therefore, *we command and order* your discretion that, if from the confession of the aforesaid clerics or otherwise it is lawfully established to you that the matter stands thus, you admonish them to restore to the aforesaid R., *delay and appeal ceasing,* the money that he paid for them, and to preserve him harmless. Otherwise, *supported by apostolic authority,* cause the aforesaid debts to be paid *in full, appeal being removed,* from their revenues, and also the losses that *the same R.* sustained on this account to be repaired; or assign the aforesaid revenues to him to be retained without molestation until those losses have been repaired and the debts paid without diminution. But if it is established that the aforesaid clerics violated the sanctity of their faith and oath, suspend them *from office and benefice with the obstacle of appeal removed. Moreover, because, etc.* (*cf. c.* 5, *On the Oath of Calumny, II.* 7.) [*Given at Rome at Saint Peter's, on the fifth day before the Ides of December.*]

Chapter III

Latin source headnote: A debtor is compelled by canonical censure to absolve from suretyship a surety who is troubled by creditors.

The same, to the Archbishop of Canterbury.

Constituted in our presence, *our beloved son* Master S. showed us by his assertion that, at *the requests* of *Master P. of Blois,* your chancellor, at the time of the Lateran Council, he interceded for him in a certain sum of money. Because the debtor has not paid it until now, *this man* asserts that he has suffered many troubles from merchants of Bologna, and that the *ancient* debt has been *greatly* increased.

Therefore, *because by reason of our office we wish to provide that one who deserved favor not sustain punishment, by apostolic writings we command* your fraternity that, if the truth of an assertion of this kind is lawfully established to you, you compel the aforesaid debtor by ecclesiastical censure, *every favor and fear being set aside and notwithstanding anyone's appeal,* wholly to absolve him from the aforesaid intercession without delay. *But because diverse experiences of diseases compel us to find varied remedies,* by authority of the present letters we also enjoin that, if *perhaps* he denies the debt or its accruals, notwithstanding a custom contrary to law, he be compelled to undergo the oath of calumny. Furthermore, because it would be difficult for the intercessor to bring his witnesses to England, after suitable security has been received from the chancellor himself by the judges of Bologna that he will go or send to hear the witnesses within a competent term, signify to them by your letters that in your stead they receive and examine them, *and question them* diligently; and, transmitting their depositions enclosed, signify how much credence can be given to the instruments or witnesses. *Moreover, if the aforesaid P., having been cited, should contemn to approach your presence or stand in judgment, within thirty days after receipt of these letters render him deprived of his benefice and convert its revenues to payment of the debts until the creditors have been satisfied.*

Chapter IV

Latin source headnote: If without license of the prelate and greater part of the chapter a religious person becomes surety or receives a loan, the church is not liable and the recipient himself is punished, unless the loan was turned to the utility of the church.

Innocent III, in the General Council.

What has been prohibited to certain religious by the Apostolic See we wish and command to be extended to all: namely, that no religious person, without license of the greater part of the chapter and of his abbot, become surety for anyone or receive from anyone a loan of money beyond the sum established by common providence. Otherwise, let the convent in no way be bound to answer for these things, unless perhaps it is manifestly established that it redounded to the utility of that house. And let one who has presumed to come against this statute be subjected to graver discipline.

Chapter V

Latin source headnote: It sets forth three cases in which a surety proceeds against a debtor before he pays, so that he may be freed from the suretyship.

Gregory IX.

If the person for whom you obligated yourself as surety has long ceased from payment of the debt, has begun to dissipate his goods, or you have been condemned concerning it, you will by law be able to sue him so that he ought to free you from the suretyship.

Title XXIII: On Payments

Chapter I

Latin source headnote: A successor in a benefice is bound to pay debts contracted by his predecessor for the necessity of the church.

Alexander III, to the Dean and Chapter of Thérouanne.

For this purpose we have been constituted, [*although unworthy, by the Lord's ordering upon the watchtower of the Apostolic See: that we extend the acuity of our consideration to all churches and direct our full attention to their advantages and advancement. But it came to our hearing on behalf of your venerable brother the bishop that he is heavily burdened by a great load of debts for the necessities of your church. Hence, as a provident and honorable man, he earnestly requested us to make you solicitous for their repayment. But because it becomes you to be diligent and vigilant for the utility and increase of the church, we command your dignity that, if it should happen that the same bishop migrates from this light before payment of the debts that he contracted for the utility and necessity of the church committed to him, until another is substituted in his place you endeavor to pay those debts from the revenues pertaining to his table. When he has been substituted, you shall altogether induce the bishop to payment of those same debts; and*] just as a son is bound to pay the debts of his father, so a prelate is bound to pay those of his predecessor contracted for the necessity of the church.

Chapter II

Latin source headnote: If a prelate obligates the church for the debts of others, he is suspended by the act itself from administration of spiritual and temporal things, and the church is not liable.

Gregory IX, to All Prelates of Churches.

If we wished justly to weigh the [*presumption of certain prelates, to be abhorred by God and men, scarcely any delay should be employed, but the severity of swift vengeance should be exercised against the transgressors. For, as it has reached us by a strong and astounding clamor, certain persons, not content that, adhering to their own advantages and seeking what is their own rather than what is Christ's, they enormously dissipate and consume the churches committed to them, presume, by inventing a new kind of alienation and dissipation, to burden them with the debts of others: granting their seals or sealed letters for contracting loans to certain clerical and lay friends of theirs, on occasion of which they have obligated the aforesaid churches in so great a quantity of money that they are afterward compelled to its payment and can scarcely or never be freed from the burden of debts. Wishing therefore to provide for the indemnity of churches with paternal solicitude, by authority of the present letters*] we firmly forbid anyone to presume [*henceforth*] to burden the church committed to him with the debts of others, or to grant letters or seals to anyone by which churches could be obligated, decreeing that, if the contrary, [*which we do not believe,*] should be attempted, the churches are not bound to payment of such debts. But if anyone should presume henceforth to come against the foregoing, let him know himself to be suspended from administration of spiritual and temporal things. [*Given at Rieti, on the second day before the Ides of February, in the fifth year.* 1232.]

Chapter III

Latin source headnote: If a cleric does not have means to satisfy his creditors, he ought not to be excommunicated or otherwise troubled; nevertheless, he shall furnish security, at least by oath, to pay when he comes to a richer fortune.

The same, to the Dean and I., Canon of Toul.

The cleric Odoard proposed that, when the cleric P., the layman D., and certain others sued him before the official of the Archdeacon of Reims concerning certain debts, that official promulgated a sentence of excommunication against him when he acknowledged such debts but was unable to pay because of poverty of resources. (*And below:*) We command that, if it is established that the aforesaid

Odoard cannot pay the aforesaid debts in whole or in part, you relax that sentence without any difficulty, after first receiving from him suitable security that, if he comes to a richer fortune, he will pay the aforesaid debts.

Chapter IV

Latin source headnote: One complaining that he paid what was not owed ought to prove this, except in the case placed here.

The same.

One who complains that he paid money not owed is bound to prove that it was paid without being owed, unless his adversary, denying the payment, is convicted thereof. For then the burden lies upon the denier of proving that he received a debt.

Title XXIV: On Donations

Chapter I

Latin source headnote: It can be understood in two ways, and according to the first understanding this it says: One who is liberal in giving considers himself to owe what he gives. Or thus, according to the other understanding: Those promising to give something are bound to fulfill it as a debt.

Gregory the Great, to the Patrician of the Gauls.

For prudent [*men such as you to adhere to kings is the consolation of many. For while they understand that a more excellent place has been given to them for the utility of the soul, it is certain that, where they find a cause of reward, they do not set it aside. With how much affection and how great devotion your glory has expended itself in the causes of the poor through zeal for piety, we learned from the report of our dearest son Candidus the priest. But because*] nobility in a certain manner imposes this law upon itself, that it considers itself to owe what it voluntarily bestows and, unless it has increased in its benefices, thinks that it has furnished nothing, [*saluting your glory with paternal love, we confidently commend to you the aforesaid priest and the patrimony of our church, so that, fortified by the aid of your favor, he may sustain no troubles or burdens. If therefore care for good endeavor advances in you, so that with your assistance the utilities of the poor are nourished and we perceive what we presume concerning your charity, increase the safeguards of your favor, because*] *in the minds of nobles a good is seen as half-complete when it is left without addition.*

Chapter II

Latin source headnote: A donation made by a prelate without consulting the chapter and to the harm of the church is not valid.

Alexander III, to the Bishop of Paris.

We believe it is not hidden from your fraternity that, since a bishop and every *other ecclesiastical* prelate is a proctor, not owner, of ecclesiastical property, he can improve the condition of the church but ought not to make it worse. But we have received that P. *of good memory,* your predecessor, *at the insistence of certain persons* made grave donations *burdensome to the church* from the property of the bishopric, to the detriment of the church, without consulting his *Catholic* canons. Hence, because

donations of this kind are not valid by law, *by apostolic authority* we grant you that it be lawful *for you* lawfully to revoke donations of this kind from both clerics and laymen.

Chapter III

Latin source headnote: In considering whether a donation made by a prelate is valid, the quantity of the thing donated and the custom of the place ought to be attended. This it says by adhering to the letter.

The same, to the Bishop of Worcester.

Moreover, if it should happen that an abbot *of your diocese* makes a donation with the prior and certain members of *his* convent, or the abbot alone makes one, and afterward a part of the convent protests, the quantity of the thing given and the custom of that land—which nevertheless does not *manifestly* oppose the sacred canons—are to be attended more diligently, and according to this the gift is to be adjudged valid or invalid. *But when to someone, etc.* (*cf. c.* 4, *On Conditions Apposed, IV.* 5.)

Chapter IV

Latin source headnote: A church not vacant cannot be granted as a benefice, but it can be granted in ownership, yet by authority of the bishop and without prejudice to the prelate.

The same, to the Abbot of Saint Albert.

To consultations (*And below:*) *Furthermore, if any cleric has been instituted in some church by the ordinary judge upon presentation of one who was believed to be patron of that church, and afterward another has evicted the right of patronage in judgment, the cleric who was instituted ought not on this account to be removed from the church itself if, at the time of his presentation, the one who presented him possessed the right of patronage of the church. But if he did not possess the right of patronage but was only believed to be patron when he was not and did not have possession of the patronage, according to English custom he will be able to be removed from that church.* But donations or grants of churches, if any are made to private persons while those who possess the churches themselves are living, ought to be of no moment. If they are made to religious places by the bishop or by his authority, they ought to be held valid, in such a way *indeed* that the persons who possess the aforesaid churches ought not to be despoiled of them during their life without their assent.

Chapter V

Latin source headnote: Notwithstanding an oath not to enfeoff anew, a prelate can complete a fief if it appears that the vassal was deceived in the measure.

Innocent III, to the Bishop of Florence.

By *your* letters you took care to propose to us that, when certain noble Florentines, *powerful, ready for service, and devoted,* during the time of schism kept J., Bishop of Florence *of good memory,* in their house *against the attacks of the emperor and his supporters,* that bishop, after the storm of schism was quieted, at the mandate of Pope Alexander *of happy memory,* our predecessor, granted them four modii of land in fief; and, *after he afterward entered upon the way of all flesh, B. of good memory,* his successor, invested the aforesaid nobles with the certain fief, as is customary. But when they caused the land assigned *to them* to be measured, they found only two modii, and insistently petitioned that the fief be completed.

Concerning this you doubt, because they are not in possession of it, lest you appear to confer it anew, *although they took care to exhibit fidelity to you and were invested with four modii; before you determined to assent to their petition, you thought that the Apostolic See should be consulted.* We therefore, attending that the church ought not to employ any fraud in its acts, answer *your fraternity in this manner:* you will safely be able to complete the fief *for those nobles,* since that land was assigned to them *under the name* of four modii, *and the aforesaid bishop promised that he would give four.* [*Given at Rome at Saint Peter's, on the second day before the Ides of December.* 1205.]

Chapter VI

Latin source headnote: In donations the fullest interpretation is made, and on this account a burdensome clause apposed after many donations regards only the nearest donation. This it says, and it is a singular case.

The same, to R. de Burg. and G. Berbur., Abbots.

When our beloved sons the abbot and monks of Melrose proposed before us that the noble man Alan wished violently to reduce into forest certain lands assigned in alms to their church *of Machelin* by *William,* formerly his father, *we recall that we commanded you to compel that A. by ecclesiastical censure, appeal being set aside, to desist from undue molestation of them concerning those lands. But, in order that you might fulfill the apostolic mandate concerning that cause, proceeding more diligently in the cause, when the parties were constituted in your presence, you received witnesses on either side and, after lengthy disputes and debates had been held in the cause itself concerning their attestations and also the instruments, you proceeded as far as the pronouncement of sentence,* [*and,*] *remitting the cause itself sufficiently instructed to our hearing,* [*you assigned to the parties as a term the octaves of Saint Andrew most recently past. Therefore, when the party of the abbot and monks came at that term, finally, because the opposing party, though awaited for a long time, did not come, we had diligent deliberation with our brothers concerning the aforesaid instruments, the depositions of witnesses, and the allegations of each party; and, after the truth had been more diligently inquired into and discussed, we clearly recognized that sentence concerning that cause was to be given for the aforesaid monastery.*] *But so that through your diligence an end may be imposed upon the same cause, we remit to you, enclosed under our bull, the tenor of the instruments, the depositions of the witnesses, and also the allegations, as we had received them, marked with the protection of your seals; by apostolic writings we command you*—we command that, *supported by our authority,* you proceed, appeal being set aside, to issue sentence for that monastery, *compelling contradictors by ecclesiastical censure and causing what you adjudge to be firmly observed by our authority,* since from the tenor of the instrument it clearly appears that this was the mind and intention of the donor: that the clause concerning the forest placed at the end of the instrument ought, according to a sound understanding, to be referred not to the earlier donation, which was so free and pure as to be immune from secular vexation and custom, but to the later grant, which has a pension and delimitation inserted; because in contracts a full, in testaments a fuller, and in benefices the fullest interpretation is to be employed. [*But if not all, etc. Given at Anagni, on the second day before the Nones of March.* 1204.]

Chapter VII

Latin source headnote: If a bishop receives certain proceeds in a church that he granted to a pious place with the consent of the chapter, he is seen to have donated those; otherwise, all proceeds apart from the cathedraticum fall to the pious place. And if the bishop granted it with the consent of the patron, the patron is understood to have donated the right of patronage.

The same, to the Bishop of Ely.

Of the pastoral office (*And below:* [*cf. c.* 28, *On the Office of a Delegated Judge, I.* 29.]) Your discretion *further* led you to consult us whether, if a bishop, with the patron consenting, grants some church to religious men using this simplicity of words, "We grant you that church," by that very fact *that church* is seen to have been granted to their uses, or only the right of patronage. But we thought that we should answer your inquiry *in this manner:* if the bishop confers the church upon them with the consent of the patron, assuredly the patron is seen to confer what is his, namely, the right of patronage; and the bishop *confers that* which *he himself* temporally obtains in it, so that, if he receives some portion of the fruits of that church, that portion is converted to their uses. But if the *bishop* ought to have no portion of its proceeds, we believe all the proceeds apart from the cathedraticum are to be converted to their uses; but, for the bishop's donation to be lawful, the consent of his chapter is to be sought. [*To explain, etc.* (*cf. c.* 28, *On Tithes, III.* 30.) *Given at Rome at Saint Peter's, on the fourteenth day before the Kalends of January.* 1204.]

Chapter VIII

Latin source headnote: Hospitallers can, to their own prejudice, subject and donate themselves and their house to another religious house. This it says according to the understanding of the gloss.

The same, to the Bishops of Florence and Fiesole.

When a question arose concerning the same hospital between our beloved sons, the Hospitallers of the Holy Sepulcher *of Pisa of the Hospital of Jerusalem on the one side,* and the brothers of the Hospital of Saint Allucius *of the diocese of Lucca on the other,* after those Hospitallers had received an adverse sentence in the possessory action that they attempted once and a second time, although for dissimilar causes, then, recurring to the petitory action, *through their proctor before our beloved son Andrew, our subdeacon and chaplain, whom we appointed as auditor for him and the proctor of the other party,* they took care to propose that, when G., formerly rector, and the brothers and patrons of that Hospital *of Saint Allucius,* having held a common deliberation, decided to subject the hospital itself to the aforesaid Hospitallers, they committed their functions in this to three proctors, establishing in common that they would accept what was done *concerning this* through them. These, *afterward approaching the aforesaid Hospitallers,* established with them that some persons should be sent to that hospital who would receive assignment of it in their name. And when they sent two of their brothers there *for this purpose,* they, *in the chamber of the aforesaid rector,* received the donation and assignment of the *aforesaid* hospital both from the *aforesaid* master and from the aforesaid proctors and other brothers of that house. (*And below:*) But the proctor of the other party answered in opposition that the aforesaid donation deserved to be retracted because it had been celebrated by the aforesaid rector and the fewer brothers, without consulting many of the brothers, who were moreover excommunicated and perjured, *and* concerning a thing in litigation *and* in fraud of the parish priest of Pescia, who had moved a question concerning that hospital. *And he alleged that all these things were sufficiently proved by the depositions of the witnesses produced. But when the other party answered manifoldly to these things, it was disputed on either side for some time.* Therefore, *having understood these and the other things that the parties took care to propose before the aforesaid chaplain, and having diligently inspected their attestations,* attending that the brothers and patrons of Saint Allucius alleged for themselves—or rather against themselves—their *own* turpitude, namely, perjury, excommunication, and fraud committed not indeed

against them but by them; and understanding that the donation made by them to the *aforesaid* Hospitallers was pure and simple, because laws assist not deceivers but the deceived, whence through the things proposed above they could not lawfully defend themselves against their own act; *and since certain of those things were not proved, by the counsel of our brothers* we took care to adjudge the aforesaid Hospital *of Saint Allucius,* with its appurtenances, to the Hospitallers of the Holy Sepulcher, in such a way that through this sentence *of our determination* no prejudice is generated against the diocesan bishop and the parish priest of Pescia, since a thing transacted between some ought not to generate prejudice against others.

Chapter IX

Latin source headnote: A donation of a fiftieth or hundredth part that a bishop makes with grave detriment to his church can lawfully be revoked; nor can he confer beyond a fiftieth or hundredth part without authority of the superior, even when injury to the church is absent.

The same, to the Bishop of Saint Andrews.

The oracle of the Apostolic See (*And below:*) [*Moreover,*] *since it often happens that bishops successively confer upon religious places from revenues pertaining to them beyond a fiftieth portion, in such a way that sometimes revenues of this kind are diminished to a third or fourth part, and sometimes more or less, your fraternity consulted us whether it is in any way lawful for their successors to revoke the things that have thus been granted beyond the fiftieth portion. We therefore* answer your inquiry in this manner: although it is determined in the canon that, if any bishop should perhaps wish to construct a monastery in his parish and endow it from the property of the church over which he presides, he ought to bestow there no more than a fiftieth part; but upon a church that he wishes to form under monastic rules or magnify for his own burials, no more than a hundredth part of the revenue of the church over which he presides; nevertheless, because it is consequently added in the same canon that this equity of moderation is to be observed —that he confer a suitable subsidy upon the one to whom he gives, and not inflict grave harms upon the one from whom he takes—with this caution observed, that he assume only one of these two rewards, whichever he pleases, this is always to be observed: one bishop or another ought not only not to confer more, but neither so much nor less, with grave detriment to his church, whether he wishes to do it together and once, or repeatedly by conferring successively upon the same or diverse churches. Hence, when it is established that grave detriment was conferred in any portion whatsoever, whether from possessions or proceeds pertaining to the episcopal table or cathedral church, it can lawfully be revoked unless an action of this kind is excluded by prescription or another lawful exception. For even if at first sight it is presumed that collation of a fiftieth or hundredth part does not inflict grave detriment, nevertheless, because not only if this is done often but even if it is done once, from various circumstances it can sometimes be apprehended *to be* very harmful—which indeed can be known more from demonstration *of the* fact than from expression of any statute—neither a fiftieth nor a hundredth part ought to be conferred, once or successively, with grave harm to the church. But if the bishop abounds to such an extent that without harm to his church he can assist the necessity of another church by even more than a fiftieth or hundredth part, although by himself he ought not to exceed the limit predefined by the canon, by which those wishing incautiously to give lavishly were restrained, nevertheless, by authority of the superior pontiff provision can be made for another's poverty in an even greater sum [*from his abundance.*] [*Given at the Lateran, on the eighth day before the Ides of April, in the tenth year.* 1207.]

Chapter X

Latin source headnote: A donation can be revoked by the donor, but not by his heir who remained silent, on account of the ingratitude of the donee in the cases expressed here.

Gregory IX.

On account of the ingratitude of the person upon whom liberality was conferred, the person of the donor could by rigor of law revoke it if perhaps he laid impious hands upon him, presumed to inflict upon him atrocious injuries, grave damage to his property, or danger to his life; this nevertheless is not extended to the successors of the donor who remained silent concerning it.

Title XXV: On the Peculium of Clerics

Chapter I

Latin source headnote: What was acquired by a rector of a church who had nothing at the time of his promotion is presumed to have been acquired from the goods of the church.

From the Council of Arles.

It must be investigated, if a priest who possessed no patrimony, when he was promoted to an ecclesiastical order, afterward purchased estates, to whose right they belong, since according to canonical authority they ought to belong to the church to which he was promoted while possessing nothing.

Chapter II

Latin source headnote: Concerning things purchased by a prelate from the goods of the church, an instrument ought to be drawn up in the name of the church; otherwise the prelate ought to be removed from the administration.

From the same.

When a priest holds a diocese, concerning those things that he shall have acquired in addition he shall make a written instrument in the name of that church, or he shall withdraw from the governance of the church *which he held*.

Chapter III

Latin source headnote: Things acquired by a bishop after his consecration are to be left to the church.

From an epistle of Pope Pius.

That every priest leave to his own church the things that he shall have acquired after the days of consecration.

Chapter IV

Latin source headnote: Things purchased by a prelate from the emoluments of the church become the church's, although the prelate purchased them in another's name.

From the Council of Rheims.

It must be inquired whether any of the priests purchased property in another's name from the revenues of the church, or from offerings, or from the vows of the faithful, *and erected structures there, or placed there things that pertain to the church;* [*and permitted the frequenting of women to occur there, or, what is more shameful, kept there such women as exercise his benefice and conduct the care of the house, and resorted to, frequented, or remained at their places unbecomingly, since action is taken contrary to the decrees by those by whom it is perpetrated, because just as the same priest, coming frequently, remained. This evil is done contrary to the decrees of the canons,*] because, just as neither in his own name, so neither in another's name ought a priest [*or anyone under a rule*] *to practice usury, much less* to commit fraud concerning ecclesiastical resources; for this is sacrilege, and equal to the crime [*of Ananias and Sapphira and*] of Judas the thief, who carried away and stole the sacred offerings [*that were being sent for the uses of the faithful and of the poor.*]

Chapter V

Latin source headnote: Improvements made by a prelate to the property of the church are his during his life, even if he relinquishes the benefice; but he cannot make a testament concerning them. This it says according to a sufficiently notable understanding.

From the Council of Toledo.

If any of the clerics is indeed proved to have made small fields or vineyards for himself on the land of the church for the sake of sustaining his life, he may possess them until the day of his death; but after his departure *from this light, according to the constitutions of the earlier canons,* he shall restore *its right* to the *holy* church, nor shall he leave it by testamentary or successory right to any of his heirs or successors, unless perhaps to one upon whom the bishop shall wish to bestow it for services and prestation to the church.

Title XXVI: On Testaments and Last Wills

Chapter I

Latin source headnote: A bishop can make a testament concerning patrimonial property; but concerning the property of the church or property acquired by reason of the church, he cannot make a testament.

Gregory IX, to Antony the Subdeacon.

It has come to us by the report of certain persons that I., bishop of the city of Atella, *when he was departing from this light,* by a testament made, instituted his *own* daughter-in-law heir to eight ounces of his *whole* substance, *and* his church to the remaining four. We therefore exhort *your experience* that you diligently investigate this, and in no way permit whatever he is shown to have possessed to be detained by any person, except only that which it is established he had as his own before the order of the episcopate. But whatever you shall know either to have belonged to the church *before* his consecration or to have been acquired by the aforesaid bishop while in the episcopal order is to be preserved in the ownership of the same church, [*lest anyone presume on any occasion to usurp anything therefrom.*]

Chapter II

Latin source headnote: An abbess cannot make a testament even if she never put on the monastic habit.

The same.

Because for those entering [*a monastery for the sake of conversion there is thereafter no license to make a testament, but their property becomes that of the same monastery, it has been decreed by the clear definition of the law.*] The abbess Gabina complained that S., formerly abbess of her monastery, after she undertook the office of governing, made a testament and left legacies to certain persons, saying that up to the day of her death she had not put on the monastic habit, but had remained in the garments that the priests of that place use, just as she who had been abbess before her had also done, and that this had been permitted almost by custom. *(And below:)* It therefore seemed necessary *to discuss with both our counselors and other learned men of this city what was* [*to be done*] *according to law; and, discussing it, they answered* that, after she was ordained abbess [*in solemn manner*] *by the bishop* and presided in the monastery for many years until her death, the character of her garment perhaps pertained to the fault of the bishop who permitted her to be so, yet could not have inflicted prejudice upon the monastery, but that her property belonged by law to the same place from the time when she entered there and was constituted abbess. *And therefore* [*because concerning the property illicitly left, etc.*]

Chapter III

Latin source headnote: If, within a year from the day of admonition, a testament is not executed by the person who ought to execute it, its execution devolves upon the bishop.

The same.

We indeed [*judge that your order itself sufficiently compels you toward the imminent fulfillment of pious matters. But lest the intervention of anyone's remission soften your zeal, we have judged that you should also be specially exhorted concerning these things.*] It has [*indeed*] come to us that S., when departing from this light, by a written declaration of his last will commanded a monastery to be founded, whose desire is being delayed by T., a religious woman and his heir. Wherefore we exhort you to admonish her that within a year she ought to establish the monastery that was commanded and to construct all things according to the will of the deceased without dispute. But if within the aforesaid time [*she should delay through negligence or cunning to complete anything, so that*] whether in the [*same*] place in which it had been established, or *certainly,* if it cannot be there and it is pleasing that it be established elsewhere, she should neglect to fulfill it with you, then let it be built by you, and let all things be assigned by you to that *venerable* place without any diminution. For thus *you will both escape before your dreadful Judge a sentence of remission, and,* according to the most pious laws, it is fitting that the delayed pious wills of the dead be fulfilled by episcopal zeal.

Chapter IV

Latin source headnote: A legacy is owed although it was left by the testator in bare words. The same, to Peter the Subdeacon.

The same, to Peter the Subdeacon.

Upon the indication—*(And below:)* We learned, *moreover,* from the report of R. that, when the wife of Redemptus was dying, she ordered *one* silver basin to be sold in bare words and the proceeds to be given to her freedmen, and that she left a silver dish to a certain monastery; in *both* of these matters we will that her will be fulfilled in all respects, [*lest from the smallest matters we incur greater sins.*]

Chapter V

Latin source headnote: A legacy is not owed when the testator bequeathed a thing that was not his own but the church's. This it says by adhering simply to the letter.

The same, to Bishop T.

Our son F., [*a most eloquent man coming to us,*] complained *to us* that the late P., his father, left to your church, for the sake of his burial, certain things subject to another's right. And indeed the laws of the age hold that an heir is compelled to make payment if his author bequeathed a thing belonging to another. But because we live by the law of God and not by the law of this age, it seems to me greatly unjust that the things bequeathed to you, which are said to belong to a certain church, should be retained by you, who ought to have restored things belonging to another.

Chapter VI

Latin source headnote: An heir who does not fulfill the commands of the testator is interdicted by the bishop from the property left by the testator. This it says by adhering to the letter.

From the Council of Mainz.

If the heirs do not fulfill the commands of the testator, all the property that was left to them, together with its fruits and other emoluments, is to be canonically interdicted by the bishop of that place, so that the wishes of the deceased may be fulfilled.

Chapter VII

Latin source headnote: Clerics cannot make a testament concerning goods acquired through the church.

From the Lateran Council.

Since in duties of charity we are bound in the first place to those from whom we know that we have received a benefit, certain clerics, on the contrary, when they have received many benefices from their churches, presume to transfer to others goods acquired through them. Therefore, because it is established that this was also prohibited by the ancient canons, we *nevertheless also prohibit it,* [*and,*] wishing to provide for the indemnity of churches, whether they have died intestate or wished to confer them upon others, we command those goods to remain with the churches. Moreover, etc. (*cf. c.* 1, *That Prelates Not Delegate Their Powers, V.* 4.)

Chapter VIII

Latin source headnote: Clerics can make moderate alms from goods acquired through the church, even when placed in sickness.

Alexander III.

In addition, let it be known to you by the present *letter* that clerics cannot by law make a testament concerning movables that they have acquired through the church; nevertheless, while living and in possession of themselves, they can moderately dispense some things from those goods, not by reason of a testament but with a view to alms, even when placed *in sickness*.

Chapter IX

Latin source headnote: Clerics can make a testament concerning their own goods or those acquired by reason of their person, but not concerning those acquired by reason of the church.

The same, to the Bishop of Vigevano.

Because *your prudence led you to consult us as to whether secular clerics can make a testament concerning movable or immovable property,* we answer your consultation in this manner: although clerics may freely dispose of those things that they obtained by paternal succession, by reason of kinship, or from a craft, or that came to them by a gift of *their* relatives or friends without respect being had to the church, nevertheless by law they can make no testament concerning those things that they received in consideration of the church.

Chapter X

Latin source headnote: A testament that a parishioner makes before the parish priest and two witnesses is valid, and a contrary custom is not valid. This it says by adhering to the words of the letter.

The same, to the Bishop of Ostia.

When you, *brother bishop,* were constituted in our presence, you proposed *to us in a diligent account* that such a custom obtains in your bishopric: testaments that are made as a last will *by those who have power over others* are utterly rescinded unless they are made with the subscription of seven or five witnesses, according to what human laws decree. But because this is known to be alien to divine law, the institutes of the holy Fathers, and the general custom of the church, since it is written, "In the mouth of two or three witnesses let every word stand," we *utterly* disapprove the aforesaid custom; and we decree that testaments that *your* parishioners shall *henceforth* make as a last will before their priest and three or two other suitable persons are to remain firm *and possess the strength of perpetual firmness,* prohibiting under threat of anathema that anyone dare, *by any presumption,* to rescind testaments of this kind. [*Moreover, since princes, etc.*]

Chapter XI

Latin source headnote: A last will for pious causes made before two witnesses is valid, and it is a singular case.

The same, to the Judges of Velletri.

It has been reported *to our ears* that, when *some* cause concerning *testaments* left to a church is brought to your examination, you *wish to proceed in it according to human and not divine law and,* unless seven or five suitable witnesses have intervened, you *wholly* postpone judging thereupon. *Wherefore, because causes of this kind concerning the judgments of the church ought to be treated not according to the laws but according to the canons, and for these, as divine scripture attests, two or three suitable witnesses suffice, by apostolic*

writings we command your discretion that, when any such cause has been brought to your examination, you treat it not according to the laws but according to the statutes of the decrees, *and,* after requiring three or two lawful witnesses, [*be content,*] since it is written: "In the mouth of two or three witnesses every word stands." [*Given at Benevento, on the Kalends of January.*]

Chapter XII

Latin source headnote: A cleric can make a testament concerning his own goods; as to goods acquired through the church, even if they are movable, the church or the successor succeeds; nevertheless, he can bestow some things upon servants or the poor. But if the deceased has several churches or benefices, an equal division will be made among them.

The same, to the Bishop-elect and Chapter of Cassano.

It has been reported to our ears that, because we established in the Lateran Council that goods acquired through the church devolve upon it at the death of clerics, you doubt whether this is to be understood only of immovables or also of movables. *You also seek to be taught by our answer whether the aforesaid goods pass by law to the use of the bishop or of him who succeeds the dying cleric, or ought to be applied to the common utility of the church. To these things, therefore, briefly* we answer that in general any goods acquired through a church ought, according to the Lateran Council, to remain with it after the death of the acquirer. By the name of the church, however, not *only* the bishop or the successor of the dying cleric, where there is a college of clerics, but the common congregation is understood, which ought to have the canonical distribution and care of those things. But where only one person is to be ordained in place of the deceased, let him dispense those goods, just as the other goods of that church, in the fear of God. Although movables acquired through the church, *as we have determined,* cannot by law be transferred to others at the choice of the dying person, nevertheless it is a custom not to be disapproved that some things from them be conferred upon the poor, religious places, and those who had served the living person, whether they are relatives or others, according to the merit of their service. But the things that come from inheritance, a craft, or learning are to be distributed according to the choice of the person dying. Since, however, some persons possess benefices in different churches, *we distinguish thus:* the things they had are to be divided among them according to a fitting valuation.

Chapter XIII

Latin source headnote: A testament is valid if someone commits his last will to the disposition of another, and he is said to have made a testament for pious causes. This it says according to the more notable understanding.

Innocent III, to the Bishop of Auxerre.

When to you concerning kindness—*(And below:* [*cf. c.* 18, *On the Meaning of Words, V.* 40.]) But on the second question we say that one who commits his last will to the disposition of another is not seen to die intestate. [*Given at the Lateran.* 1202.]

Chapter XIV

Latin source headnote: The bishop seeks his portion from things left to the church, although something was left to him by the testator, unless it was left by the testator in such a way, and not in

fraud, that he should remain content with that portion, and he acknowledged the legacy.

The same, to C., Cardinal Priest of the title of Saint Lawrence in Lucina.

Of the office—*(And below:* [*cf. c.* 38, *On Election, I.* 6.]) Secondly, you asked: when someone in a testament leaves his own portion to the bishop and leaves *many other things to monasteries or churches and others,* whether the bishop can seek his lawful portion from those things; *adding whether, when someone by testament, in fraud, has established a small mortuary and has left many other things for his soul, the bishop can nevertheless exact from the other things the portion established by the canon. But concerning these matters,* we answer your consultation in this manner: if he bequeathed that portion to the bishop with the condition that he be content with it alone, and the bishop accepted *it,* because through this he is seen to have renounced the other things, he will not be able to exact a portion from the rest. But if he left it to him absolutely, he will nevertheless be able to vindicate from the rest the portion owed to him. If, however, it is established that he established a small mortuary in fraud so that in the rest the bishop would be defrauded of the portion owed, because fraud and deceit ought to afford patronage to no one, the bishop will be able to exact from those things the portion established by the canon, saving the indulgences of the Roman Pontiff that have been granted to certain regulars. [*You asked, etc.; cf. the following chapter.*]

Chapter XV

Latin source headnote: A thing left to a bishop in consideration of his person is not divided with the cathedral church; otherwise, if it is left in consideration of the church, whether nothing is left to the church or something is, whether jointly or separately. But if a bequest is made to the church alone, the bishop will have the canonical portion. A bequest is presumed to have been made in consideration of the church when it is made to an outsider having an administration; otherwise, if it is made to one not having an administration. But with inferior churches the bishop does not divide what is left to him, because he does not have as great a communion with inferior churches as with the cathedral.

The same.

You asked how those things that a testator bequeaths for his soul in his last will are to be divided between the bishop and the church. And indeed it is regularly true that the bishop ought to have from them a third or fourth portion according to diverse customs; but it must be diligently considered whether the testator bequeaths in this manner: "I leave," *he says,* "this to the bishop"; or, "I leave this to the church"; or, "I leave this to the bishop and the church"; or, "I leave this to the bishop, and *I leave* that to the church." In the first case a distinction must be made as to whether *that* is left to the bishop by an outsider or by a relative. If by an outsider, it is generally true that it is presumed to have been left in consideration of the church, not of the person. Hence the cathedral church can seek a canonical portion from it, just as his own portion belongs to the bishop if something is left to the church *itself.* And this indeed is true unless the testator expresses that he wishes it to belong only to the bishop, not to the church. In that case the disposition of the testator is to be observed; but otherwise if he expresses that he wishes it to belong only to the church, not to the bishop, because the private disposition of the testator cannot alter the general constitution of the canon. Nor is what is read in the canon contrary to this, namely, that pontiffs to whom something is left or donated by outsiders either together with the church or separately—because he who donates is

proved to offer this for the redemption of his soul, not for the advantage of the priest—shall reckon it among the resources of the church not as their own property but as something left to the church; for this is true when the testator bequeaths that thing separately to the bishop in such a way that he does not express whether he wishes it to pertain only to the bishop and not to the church. But if that is left to the bishop by a relative, it is presumed to have been left not in consideration of the church but of the person, unless perhaps the contrary were proved, and the church can seek nothing from it during his life. But if it is left to the bishop and the church, a canonical division of it is to be made between them. If, however, this is left to the bishop and that to the church, whether the things left are equal or unequal, they are to be reduced to a canonical division between the bishop and the cathedral church, unless both wish to be content with the disposition of the testator; which, on account of the favor accorded a last will, it is sufficiently fitting to observe where neither fraud nor deceit intervenes and no one is excessively defrauded of the portion owed. But it is otherwise if something is bequeathed to the bishop and some things to chapels, monasteries, or other pious places. For in this case what is bequeathed to the bishop is his preferentially together with the cathedral church, just as if it were bequeathed to any other person. And from those things that are bequeathed to others, he will nevertheless obtain the canonical portion, since there is not as great a communion between the bishop and chapels, monasteries, or other pious places as there is between the bishop and the cathedral church, to which he is joined in spiritual marriage. Hence those things that the bishop acquires he acquires not for them but for this church alone. But this is generally to be observed concerning one who can possess property of his own and does not have a prelacy or administration of a church: if something is specially left to him, not only by a relative but also by an outsider, it is understood to have been left not in consideration of the church but of the person, unless proof to the contrary should appear. And therefore neither the bishop nor the church can vindicate anything from it for itself during his life. And this is understood to be true when fraud is not at all procured; if it is detected, it ought not to afford patronage. [*You signified, moreover, etc.; cf. c.* 9, *On Penance, V.* 38.]

Chapter XVI

Latin source headnote: In the goods of a father, mother, and grandmother, a person has what is owed by the law of nature, in which he cannot be burdened; and a son who is asked to restore an inheritance under a condition deducts what is owed by the law of nature and the Trebellianic fourth, in which the fruits received after joinder of issue are computed.

The same, to the Bishop of Tuscania.

Raynutius de Clera, having two daughters, namely Alterocha and Adiecta, as well as a mother, Clera, and a wife named Adelasia, made a testament when placed at the end of life, leaving to his adult daughter Alterocha, beyond the dowry he had given her, a house and a certain garden in the same testament. But to the minor Adiecta he left his remaining goods, adding that Alterocha and the offspring whom she was carrying in her womb, *since she was pregnant at that time,* should succeed the same minor if she died without children. *The same testator further enjoined the tutors whom he had given to his minor daughter Adiecta to join her in marriage with all her goods.* Therefore, after the testator died, the tutors of the minor, according to Lombard law, delivered her with all *her* goods left to her by her father to a certain man named Peter. And she, *after she had cohabited with him for four years* and had conceived a son by him, finally died without children; her husband, the same P., surviving for some

time, possessed her goods in peace. He, contracting marriage with another woman and conceiving sons by her, closed his last day.

Afterward, *however,* when matter for a question concerning the aforesaid goods of the same Adiecta arose between Alterocha and *Montanellus,* her son, on one side, and the sons of the same P. and Raynerius, their tutor, on the other, they began to litigate with one another before G., judge of Tuscania. Before him Alterocha and *M.,* her son, sought the goods of the late Raynutius, *the father of the same Alterocha,* as owed to them by reason of a fideicommissum or substitution, while *Raynerius,* tutor of the aforesaid sons of P., said in opposition that prescription of a year, usucaption on account of dowry, and prolonged silence for a long time obstructed them. He alleged further that, before all else, both a third of Clera, mother of the *aforesaid R.,* the testator, and a third of Adelasia, his wife, as well *as* a fourth by the Trebellianic right in the name of Adiecta herself were to be deducted from those goods. But the said judge, *after diligently examining the allegations and reasons of each party,* condemned the aforesaid Raynerius, in the name of the tutorship of the wards, to restitution of the goods of the *late* Raynutius, after first deducting the third of Clera that she had donated to Adiecta and her husband, concerning which he did not appear in any way to have thought in the substitution that Raynutius made; and after also deducting the third of Adelasia that she had sold to the aforesaid P. The same judge also commanded that those thirds be deducted from those things from which they could be deducted according to the custom of the city of Tuscania. The same judge further enjoined that the fourth be deducted by the Trebellianic right, since even any outsider burdened with restitution could have deducted it; but each party appealed from that sentence. *(And below:)* When, however, there had been lengthy litigation before G., cardinal deacon appointed by us as auditor, he, *after taking counsel with learned men,* by our mandate pronounced unjust the sentence of the aforesaid judge *Guezius,* namely, in that he said that the third of Clera and the third of Adelasia were to be deducted in full, *and the same cardinal* pronounced that an appeal had lawfully been made from it, defining that those thirds were to be deducted in such a way that the legitimate portion owed by the law of nature to Alterocha should remain safe to her in each; to the restitution of this he then condemned the said *Raynerius*. But in that the same judge held that the *fourth part* was to be retained by the Trebellianic right, he confirmed that judge's sentence, namely in such a way that the fruits received from his goods, from the time of joinder of issue, by the aforesaid Peter and his sons after the death of Adiecta should be computed in it. If these suffice for the fourth and its fruits, let no other deduction be made under that name; otherwise, an account of computation is to be had according to the quantity of fruits received. Since, however, Adiecta's father could not burden her in her legitimate portion, he held that the legitimate portion itself, namely of the part that would have been owed to her on intestacy, was to be deducted and also retained, *namely* in such a way that the deduction be made only from those things from which it is accustomed to be made according to the custom of the city of Tuscania. But in that the aforementioned judge condemned Raynerius in the name of *his* wards to make restitution of the residue to Alterocha and her son, he confirmed his sentence. We therefore, holding valid the sentence of the same cardinal, *promulgated as justice required,* confirm it by apostolic authority.

Chapter XVII

Latin source headnote: A bishop compels fideicommissaries or executors of a testament to execute the pious wills of the deceased, even if the testator had forbidden this.

Gregory IX, to the Bishop of Noyon.

Your fraternity intimated to us that some persons, religious as well as secular clerics and laymen, do not hesitate to apply to other uses money and other goods that ought through their hands to be expended for pious uses under the testaments of persons dying. Since, therefore, in all pious wills provision is to be made by the bishops of the places that all things proceed according to the will of the deceased, even though it should happen that this was forbidden by the testators, we command that, after admonition, you compel executors of testaments of this kind to expend those goods faithfully and fully for the aforesaid uses.

Chapter XVIII

Latin source headnote: A son who is asked to restore an inheritance deducts a third by the law of nature and a Trebellianic fourth, in which he can leave legacies, institute heirs, and impose a penalty.

The same.

Raynaldus, son of Pepo, was instituted heir by him in this manner: that he should restore the inheritance to his paternal uncles if he died without male children. After Pepo died, Raynaldus submitted to three arbiters with them concerning certain goods of the same inheritance. After one of them died, the other two, proceeding as they could according to the form of the submission, arbitrated in this manner: neither party should have license to transfer the aforesaid things in any manner to another except to their male children lawfully descending from them, and whatever was done contrary to this should not be valid. Thereafter the said R., having no offspring, made a testament in which he bequeathed half of his share in the aforesaid things to certain maternal uncles of his, but the other half and the remaining paternal goods to one of his paternal uncles and his sons; adding that, if the said heirs of R. should act contrary to the legacy owed to his said maternal uncles, the goods in which they could succeed R. by testament or on intestacy should devolve upon those maternal uncles in determined portions.

Finally, when the same R. paid the debt of nature and one of the paternal uncles entered upon the aforesaid inheritance, the said maternal uncles moved a question against the same paternal uncle and his sons before the judge of the community of Orvieto, seeking the aforesaid legacy according to the share that fell to them, and seeking that, if those men acted contrary to it, whatever had come or could have come to them by occasion of the testament of the same R. be restored to the maternal uncles. The aforesaid judge, absolving those men from their impleading concerning the legacy, condemned them by sentence to restitution of the other goods. When both parties appealed from his sentence to our hearing, each party seeking that the sentence of the said judge be annulled insofar as it had been promulgated against itself and be committed to execution insofar as it operated for itself, our beloved son O., cardinal deacon of Saint Nicholas in the Tullian Prison, after issue had lawfully been joined before him, pronounced that—because the same R. had in the goods of the late Pepo, his father, a third part owed by the law of nature, in which he could not be burdened, and also a Trebellianic fourth, which any outsider burdened with restitution could have deducted, on account of which the aforesaid R. had those portions in the aforesaid things bequeathed to his maternal uncles and could bequeath them in his last will, and through this the legacy was valid up to the aforesaid third and fourth, although he had not expressed them in making the legacy—the aforesaid award notwithstanding, which could not prevent the legacy from being valid, the judge himself had judged

wrongly in wholly absolving the said paternal uncle concerning this, who confessed that he possessed half of the aforesaid things. He condemned him to restitution of half of the third and fourth part of that legacy according to the share of it that fell to the said maternal uncles, and confirmed the sentence of the aforesaid judge as to the residue.

But as to the fact that the same judge had condemned the said paternal uncle and his sons entirely concerning the other things sought in the second article, he decreed that the judge had pronounced wrongly, because his sons were not found to have committed anything contrary to the will of the testator, since they were found to possess none of the things sought. But as to the portion that the paternal uncle had in those goods by reason of the aforesaid fourth and third that R. had in the same goods, in which his institution, legacy, and addition of a penalty were valid, for the share falling to the same maternal uncles, he confirmed the sentence of the aforesaid judge concerning the aforesaid legacy, absolving the same paternal uncle and his sons as to the residue; and saving nevertheless to him, by the law of institution, the benefit of the Falcidian law in the restitution of the aforesaid legacy if he obeyed the will of the testator within the lawful time, since he made an inventory and the Falcidian law is introduced against the will of a testator. We therefore, holding valid the sentence of the cardinal himself, confirm it by apostolic authority.

Chapter XIX

Latin source headnote: A testamentary executor who undertook that office is compelled to execute it.

The same.

John, a cleric, and P., a layman, executors of the last will of O., a cleric of Holy Cross, who in his last will bequeathed from his goods to venerable and pious places, further commanding that his creditors be satisfied through them, ought, after undertaking the mandate, to be compelled by the diocesan bishop to fulfill the testator's last will.

Chapter XX

Latin source headnote: It sets forth certain legacies from which the canonical portion is not paid unless it is done in fraud.

The same.

From those things that are bequeathed to churches or other pious places in ornaments or for them, or for the fabric, lights, an anniversary, the seventh, twentieth, or thirtieth day, or for other things pertaining to perpetual divine worship, the canonical portion ought not to be deducted, provided it is not done in fraud so that the bishop or parish church ought to be defrauded of it.

Title XXVII: On Intestate Successions

Chapter I

Latin source headnote: A cleric can give his own goods to whomever he wishes; but if he dies intestate and has no relatives, the church succeeds. This it says when joined with the gloss.

From a council held at Alten.

But [*also*] this was established there concerning bishops, priests, and clerics: if by inheritance or in another manner they have acquired something by reason of their person, it is lawful for them, while they live, to donate *these things* to whomever they wish, *for the remedy of their soul, to whatever church they choose, or to their relatives or friends.* But if they die before they have done this, let all things be perpetually consecrated to the altar that they serve and be delivered into its right. [*That the same was established concerning priests who serve laymen, etc.*]

Chapter II

Latin source headnote: If one formerly a slave, having been made a priest, dies intestate, his goods are divided according to the form contained here. This it says according to the singular understanding, which also holds today.

From the Council of Tribur.

It was brought before the holy council that certain laymen act wickedly against their priests, so that they vindicate shares for themselves from the substance of dying priests as from their own slaves. We therefore forbid *by canonical authority* that this be done hereafter; but, just as they were made free to receive the grade and perform the divine office, so let nothing be exacted from them apart from the divine office. Their peculium, however, is to be divided into four parts, of which one is to be assigned to the bishop, another to the church, a third to the poor, and a fourth to the relatives. And if there are no suitable relatives, let the bishop receive it and diligently distribute it for the use of the church. And if anyone presumes *to act* contrary to this, let him be anathematized.

Chapter III

Latin source headnote: Touching upon two notable and singular understandings of this chapter, it is summarized according to each understanding, and first thus: A testament made for pious causes by declarative words, even words uttered on account of another matter, is valid, although the succession or testament comes to the exclusion of another church. Or otherwise, according to the other understanding, thus: An offering is proved by one witness to the truth and also by a confession made incidentally, even with respect to the effect of obtaining the goods offered.

Innocent III, to the Bishop of Maurienne.

When our beloved son the abbot of Brusia *had* [*recently*] *come to our presence and* had waited there for a long time on account of the cause he had against *our venerable brother* the Bishop of Autun, *finally* a messenger of the same bishop arrived. When they wished to litigate with one another, we appointed as auditor our venerable brother I., Bishop of Viterbo and cardinal of Saint Clement. Therefore, when they were constituted in his presence, the aforesaid abbot proposed that, *when* the archpriest of Alerio offered himself and his goods to the monastery of Brusia for participation in its prayers *with a view to piety,* certain of his goods being reserved for his simple use, he received from the hand of a certain brother of the same coenobium an enlargement of the crown as a sign of that offering; and that he had often declared in the common chapter that he had made this grant in this manner, and that he possessed not in his own name but [*in the name*] *of the monastery, and acquired for the monastery whatever he acquired.* The same archpriest also continued publicly in this for almost twenty years, with no one contradicting or protesting, in such a way that through public fame it had become known to all. For the abbot of Buxeria who was in office at the time, and the monks themselves, with the

knowledge of the Bishop of Autun who was in office at the time and with him making no protest at all, publicly used his goods no otherwise than the other goods belonging to the monastery. Moreover, what the said archpriest, in possession of his mind, had done between the living, he confirmed in his last will, sound in mind although sick in body. And when the same abbot and monks wished to bring back to their monastery the things thus lawfully given and other things that they had granted to the archpriest himself for use, the aforesaid bishop, bringing violence upon them, occupied not only the things of the archpriest but also the things of the monastery itself. When they sought these back in good peace, he, so that fuller matter for raging over those things might be granted to him, appealed to the Apostolic See, fixing the octaves of blessed Martin most recently past as the term for his appeal.

On the contrary, the aforesaid messenger of the bishop alleged that, when that donation was made, the archpriest was out of his mind to such an extent that, when he had been asked by the monks, "Do you wish to receive the monastic habit?" and had answered, "I do," immediately, when asked by another, "Do you wish to be an ass?" he answered likewise, "I do." And thus the aforesaid monks carried him off to their monastery, which the same messenger offered to prove. [*Indeed, when the aforesaid abbot immediately produced certain witnesses for the assertion of his party, we caused them to be received and diligently heard. When we had interlocutorily decreed that their attestations ought to be published, because the bishop's party did not wish to produce witnesses concerning those articles concerning which the same abbot had produced witnesses, and when those attestations had been publicly recited and diligent disputation had been held concerning them, many things were alleged against the statements of the witnesses. And when the parties had renounced further pleading, the said cardinal faithfully recited to us and our brothers whatever had been proposed on each side.*] *Having heard and learned these things,* we sufficiently understood it to have been proved that the said archpriest, acting at the end of life as though expressing his last will, asserted that he had conferred himself and his goods upon the monastery *of Buxeria.* Hence, when he was asked to make a testament, he answered that he could not make a testament because he had conferred himself and his goods upon the aforesaid monastery. And although only one witness said that he had seen when *the aforesaid archpriest* offered himself and his goods to the monastery, nevertheless, because other witnesses said that they had heard the *archpriest himself,* in the presence of the abbot, confessing *and attesting* what has been aforesaid, they greatly assisted the assertion of the abbot, not as proving sufficiently but as giving it powerful support.

But because the bishop's party asserted that it wished to prove that the said archpriest, laboring at the end of life as though delirious, had been alienated *from* his mind, whence what he expressed was not valid, we, *after diligent prior deliberation with our brothers concerning these and the other things proposed on each side,* thought that cause should be committed to you under this form: unless the aforesaid bishop lawfully proves that the often-mentioned archpriest was not in possession of his mind when he expressed his last will, perpetual silence is to be imposed upon him concerning his impleading of the monastery, and he is to be compelled to restore to the monastery whatever he occupied from the goods of the archpriest himself or even of the monastery. But if he lawfully proves that *the aforesaid* archpriest said with an alienated mind the things premised concerning his last will, the monastery is to be condemned to make restitution to him, in the name of the parish church whose administration the archpriest had conducted while he lived, of the goods that had belonged to that archpriest, since the same archpriest died intestate; and silence is to be imposed upon the monastery concerning its impleading of the bishop. [*No letters, etc. Given at Rome, on the fourth day before the Nones of June.* 1198.]

Title XXVIII: On Burials

Chapter I

Latin source headnote: One dying intestate is buried in the tomb of his ancestors, or where burial is chosen; nevertheless, the parish church will have the canonical portion of what he left to the church of burial. This it says according to the truer understanding.

Leo III.

We, considering the institutes of the earlier fathers, *and also confirming their decrees,* establish, *as is most holy,* that everyone *namely* lie in the tombs of his ancestors, as the passing of the patriarchs teaches. Nevertheless, we deny no one the choice of his own burial place, and even one belonging to another. For the Lord and Master, *who was without sin,* chose one belonging to another as his own. But because the worker is worthy of his wage, we hold that by *right* he should give a third part of his disposition to that church in which he was accustomed to be refreshed with heavenly nourishment *daily from the beginning of his origin,* so that according to the Apostle [*thus*] they may be partners in consolations as they were also in sufferings; and then, finally, let him choose burial wherever he pleases. Lest it be done otherwise, by the authority of our Lord *Jesus Christ,* who spoke through the Prophet, saying, "Do not transgress the ancient boundaries that your fathers established," *and of the Apostles Peter and Paul and all the saints,* we denounce and forbid it under the bond of anathema, *because it is neither ours, nor has it ever been lawful for any priest or faithful layman, for any reason, to inflict prejudice in such matters without manifest guilt of an offense.*

Chapter II

Latin source headnote: One who is converted to a monastery is bound to leave to the parish church half of the goods that he disposed of for his soul.

Pope Leo, to all the faithful constituted throughout Dardania.

It has been reported to our ears *that there are certain persons acting perversely who strive to overturn and attempt to divide the unity of the church, namely abbots and monks who keep watch and teach not from the pursuit of charity but from the zeal of rapacity, and do not cease to seduce secular persons whom they can ensnare, so that they deliver their property and possessions, whether in death or in life, to their monasteries, and leave nothing from* [*their*] *goods to the churches to which they are seen to be subject and from which they received or receive baptism, penance, the eucharist, and also the nourishment of life with the milk of the flesh. Therefore, observing this tinder of discord, we wish to inhibit it in every way and utterly prohibit it from being done further, considering that it is not good if those who formerly were partners in suffering, according to the Apostle, are exempt from the partnership of consolations. And because the hireling is worthy of his wage, therefore we command and* mandate that whoever from now on wishes to be converted in a monastery, whether in death or in life, leave half of all the property and possessions that he decreed to dispose of for the salvation of his soul to the church to which he is known to pertain, *and thus have license to go and be converted in the monastery as he pleases. But whoever shall be an opponent, overthrower, and violator of this enactment shall lie under the sword of anathema.* [*Given at Rome, on the twentieth day of the month of April, in the fifth indiction.*]

Chapter III

Latin source headnote: Where someone, leaving the tomb of his ancestors, chooses a tomb in a less religious place, induced by fraud, or from contempt, or without the canonical portion being left to his church expressly or tacitly, the choice does not hold. This it says, preserving this text so far as can be done.

Innocent III, to the Archbishop of Genoa.

We do not believe your fraternity to be ignorant that from antiquity the tombs and cemeteries of the dead have been disposed at those churches and monasteries in which convents of religious brothers are constituted, and prayers and solemnities of masses are more frequently celebrated for the living as well as the dead. Hence the devotion and last will of those who desire to be buried at churches of this kind are in no way to be contradicted. But those who, leaving the ancient churches and the tombs of their fathers and other relatives, transfer themselves to new and less religious places, contrary to the custom of the Fathers of the Old Testament, who are read to have been buried with their fathers, are seen to act unreasonably and contrary to the ancient institution. Hence, if *perhaps* P. de Castello commanded anything concerning the burial of his body contrary to *so* ancient and reasonable a custom, this does not prejudice reason but ought to lack force. Wherefore, *by the present writing* we command, *and by commanding direct,* that you cause the body of P. himself to be returned to *our beloved sons,* the monks of Saint Stephen, and to be buried with his fathers.

Chapter IV

Latin source headnote: If someone in the sickness from which he dies offers himself and his goods to a monastery, the parish church has a canonical portion from them; otherwise if he does so in health.

Alexander III, to the Bishop of Spalato.

Concerning those who transfer themselves with their goods to religious places in sickness or in health, leaving nothing to you or to the churches from which they received the nourishment of salvation, we wish this to be made known to your prudence: if they pass to religion in the sickness itself, provided that they die from that sickness, a canonical portion from their goods ought to be furnished to those churches by which they had been received. But if they have transferred themselves to religious places while in health, they cannot be compelled to impart to the aforesaid churches anything from the things that they confer upon those places, because they are then free to confer their goods not only upon *religious places* but also upon any private persons.

Chapter V

Latin source headnote: Those who bury another's parishioner, whom they ought not to bury, are compelled to restore the body and the things they obtained by reason of him. This it says together with the following chapter.

The same.

It was intimated to us on the part of the canons of Obrigen that the prior of Insula buried a certain parishioner of theirs in his church after an appeal had been made to us. *Wherefore, because this is known to be contrary to ecclesiastical discipline and wholly alien to the path of reason, that someone should put his sickle*

into another's harvest, by apostolic writings, directing your fraternity, we command that you *admonish and strictly* compel the aforesaid prior to restore to the aforesaid canons the body of *their* aforesaid parishioner and thereupon agree *peacefully and* amicably with them, *or not defer presenting himself in our presence*.

Chapter VI

Latin source headnote: It is summarized above, in the chapter immediately preceding.

The same, to the Dean and Master R. of Ravenna.

Since it is free, *by all the institutes of the holy Fathers, to choose burial for oneself in a last will at religious places, he who presumes in this respect to contradict the devotion of the last will of persons dying undoubtedly opposes canonical reason.* It has come to our hearing from the complaint of the abbot and brothers of Saint Martin of Laon that, when a certain priest was carrying the body of a certain woman to the same church for burial, as she had disposed in *her* last will, the monks of Saint Vincent of Laon did not at all hesitate violently to seize her body and bury it in their *own* church. *And they presumed to do the same concerning the son of Ralph Canis. Concerning this we are indeed moved with vehement wonder, since the same monks both act contrary to the institutes of the holy Fathers and strive to violate the privileges of our predecessors and our own, which the aforesaid brothers propose that they have concerning free burial. Hence it is that by apostolic writings* we command your fraternity that, *after summoning each party before you, you inquire into the truth of the matter concerning this and,* if you find it to be so, you compel the aforesaid monks to restore in their entirety to the aforesaid brothers the bones of the aforesaid woman and the benefactions that they are known to have received by occasion of her burial, and not to presume to do such things hereafter.

Chapter VII

Latin source headnote: A married woman can freely choose a burial place for herself.—(Whether, etc.:) A father can cause his minor children to be buried where he wishes, if the custom of the place so holds. This it says.

Lucius III.

But concerning a wife, whether she, just as *also* the husband, ought to have free choice of burial, it seems to us that no distinction is to be made in this respect between husband and woman, but we believe the faculty of each to be equal in this case, since that choice pertains rather to the state in which a woman is released from the law of her husband. But whether a father can bury his minor children where he prefers, we do not find defined by the holy Fathers, and therefore we decree that it is to be left to the custom of the land.

Chapter VIII

Latin source headnote: If a parishioner of the cathedral church is buried elsewhere, a fourth of his funeral offerings or of the things left to the church of burial is owed to the chapter of the cathedral church.

The same, to the Provost and Chapter of Faenza.

Since concerning a certain chapter, *which by favor of religion* [*is granted by the Apostolic See to certain churches—namely, that when some persons choose burial with them, canonical justice is reserved to the churches*

from which the bodies of the dead are taken—scandal sometimes arises among ecclesiastical men, who devise a diverse and varying interpretation of that justice, we have thought, from the clemency of the Apostolic See and with the counsel of our brothers, that provision should be made for you and your church, which, as we have learned, suffers grave injury in this matter through certain religious men exceeding what was granted to them by the Apostolic See in the aforesaid chapter.] *Hence it is that,* [*inclining to your just petitions,*] by the authority of the present writing we establish that, if it should happen that any of your parishioners chooses burial elsewhere, *according to the statutes of blessed Gregory* a fourth portion from his testament is to be left to you. [*In addition, etc. Given at Verona, on the fifteenth day before the Kalends of April.* 1186–87.]

Chapter IX

Latin source headnote: As to the quantity of the canonical portion owed to the parish church, the custom of the place is followed.

Clement III.

You wished to be made certain by us how that clause that is customarily apposed in *our* privileges *concerning* the justice of those churches from which the bodies of the dead are taken ought to be understood and expounded. But since diverse institutes of our predecessors have issued concerning this article, Leo holding that justice to be sometimes a third part and sometimes *half a part,* and Urban *III* holding it to be a fourth, we furnish such a response amid this variation: as blessed Jerome says, let each province abound in its own understanding; according to the reasonable custom of the region, let that justice be observed at a half, a third, or a fourth part according to the diversities of places. [*Given at the Lateran, in the second year.*]

Chapter X

Latin source headnote: Those privileged concerning the right of conducting funerals can bury those who choose burial with them, nevertheless paying the canonical portion to the parish church. But if they bury others, they are bound to restore whatever they received by occasion of the funeral.

Innocent III, to the Bishop of Clermont and the Abbot of Mauriac.

When *our beloved son,* the prior of the church of Montferrand, and *B.,* the proctor of the Hospitallers of the diocese of Clermont, were constituted in our presence, *we appointed our venerable brother the Bishop of Sabina as auditor, before whom* the same prior proposed that the aforesaid Hospitallers had received for ecclesiastical burial certain of his parishioners, two of whom were under the lawful years, *on account of which the same church sustained damage of more than five thousand solidi. Wherefore the same prior humbly supplicated that we deign to forbid the Hospitallers themselves from attempting such things hereafter to his prejudice, and to compel them to repair the damages that he sustained therefrom.* On the contrary, the aforesaid proctor proposed that, by privilege as well as by special indulgence, it is lawful for the Hospitallers to receive indiscriminately for ecclesiastical burial all persons except the excommunicated and interdicted who have chosen to be buried with them, and that they can lawfully accept fideicommissa left in a last will, only a fourth being paid to the parish church from whose parish the bodies of the dead are taken, except from horses and arms, which were granted to them in aid of the Holy Land, from which they are not bound to deduct a fourth. *Therefore, when the same bishop had faithfully reported to you these and the other things proposed before him, all the attestations and allegations having been heard and understood, with the counsel of our brothers,* we thought that such a sentence should be rendered

concerning these matters: the aforesaid Hospitallers are hereafter not to receive parishioners of the aforesaid church for ecclesiastical burial unless they have chosen to be buried with them. And then the parish church is to receive a fourth part from the offerings, beds, and other things that the deceased left for his soul in his last disposition, except from horses and arms, and the Hospitallers are to have the residue, unless the deceased was induced by their deceit or fraud to make a disposition of this kind. We nevertheless enjoin upon the Hospitallers themselves that they satisfy the aforesaid prior concerning the fourth *part* of three thousand solidi, since it is established that they received those solidi from his parishioners and it is not sufficiently shown that they had been their oblates or converts. We further thought it should be enjoined upon them that, unless they prove that G., a parishioner of the prior who was killed in the fields, had chosen burial with them, they restore to the aforesaid prior all things that they received in consideration of him; otherwise, they are bound to restore only a fourth part. But for those who are established to have died under the lawful years, *we enjoined upon them that* they restore all the things they received for the sake of their burial. *Wherefore, by apostolic writings we command your discretion that, appeal being removed, you cause by ecclesiastical censure what was judicially determined by you to be firmly observed.* [*Given at Ferentino, on the second day before the Ides of June, in the ninth year.* 1206.]

Chapter XI

Latin source headnote: One who died accidentally ought not to be deprived of ecclesiastical burial.

The same, to the Archbishop of Tours.

It was intimated to us on the part of the relatives of M., *a young woman now deceased,* that, when *in the twilight of night* the noble man *N.,* lord I. of Île-Bouchard *in the diocese of Tours,* had laid an ambush for the *young woman, wishing to violate her,* whom he had often solicited for fornication, and she encountered upon a certain bridge the servants who were endeavoring to seize her, finally, *she herself,* fleeing their hands, fell from the bridge into the river and was accidentally drowned. *But after she was drawn from the river, the chaplains of that place hesitated to deliver her body for burial, and you also, having been consulted, thought that an apostolic response should be sought concerning this.* Wherefore, *by apostolic writings* we command your fraternity that, since that *young woman* did not voluntarily cast herself down from the bridge but, *fleeing the hands of those who,* as was expressed above, *were endeavoring to seize her,* fell by accident, you cause her body to be delivered to ecclesiastical burial, especially since she is known to have fled for an honorable cause, and communion is to be given to her now dead, to whom it was given while living. [*Given at Saint Peter's, on the fourth day before the Nones of March, in the ninth year of our pontificate.* 1206.]

Chapter XII

Latin source headnote: If the bones of excommunicated persons are buried in an ecclesiastical cemetery and can be distinguished, they ought to be exhumed and cast out; otherwise, it is otherwise.

The same, to the Archbishop of Nidaros.

It is established by the sacred canons, *and approved by the custom of those observing them,* that we not communicate with the dead with whom we did not communicate while living, and that those who were previously cut off from ecclesiastical unity and were not reconciled to the church at the moment

of death are to lack ecclesiastical burial. Hence, if it sometimes happens that either the bodies of excommunicated persons through the violence of certain persons, or by some other event, are buried in an ecclesiastical cemetery, if they can be distinguished from the bodies of others, they ought to be exhumed and cast far from ecclesiastical burial. But if they cannot be distinguished, we do not believe it expedient that the bodies of the faithful be disinterred together with the bones of excommunicated persons, since, although no burial or a base one does not harm the just, a celebrated or splendid one does not benefit the impious. [*We distinguish, etc.; cf. c.* 5, *Concerning Things Done by Force, I.* 40.]

Chapter XIII

Latin source headnote: Consecrated cemetery ground to be dug for burial ought not to be sold.

Innocent III, to the Bishop of Maguelone.

The perversity of a custom to be abolished, *indeed of an abominable corruption,* has, as is said, grown established at Montpellier, so that, *namely,* when persons die, permission is not given to dig a grave until a certain price is paid to the church for the ground in which they are to be buried. *Therefore, because this is far from the rule of piety and the honor of the church, by the authority of the present writing* we command you that, since you are the diocesan bishop of the place, you forbid clerics to presume to exact anything at all for this cause, *enjoining upon the laity that they observe the laudable custom introduced through the pious devotion of the faithful toward the church of God, and that they not appear to corrupt it with the leaven of heretical depravity under the pretext of ecclesiastical purity.*

Chapter XIV

Latin source headnote: An excommunicated person who was absolved at death by his priest ought to be buried in a cemetery, and the heirs are compelled to make satisfaction.

Gregory IX, to Bishop N.

A parishioner of yours who, excommunicated for manifest offenses—namely, homicide, arson, violent laying of hands upon ecclesiastical persons, violation of churches, or incest—was absolved by his priest according to the form of the church while he was at the end of life, ought not to be denied a cemetery and the other suffrages of the church; but his heirs and relatives, to whom his goods came, are to be compelled by ecclesiastical censure to make satisfaction for him.

Title XXIX: On Parish Priests and Another's Parishioners

Chapter I

Latin source headnote: Between a bishop substituted for a heretical bishop and the heretical bishop himself who returned and was received by dispensation, the bishopric is divided in the manner expressed here.

From the African Council.

If a bishop from the Donatists is converted to Catholic unity, let them divide equally between themselves those places that shall be found thus, where both parties have existed; that is, so that some places pertain to one and others to the other, in such a way that he who has more time in the episcopate makes the division, and the junior chooses. But if perhaps there is one place, *let it pertain to*

him to whom it is found to be nearer. But if it is equally near to both sees, let it pertain to him whom the people choose. But if *perhaps* the ancient Catholics wish their own [*bishop,*] and those converted from the Donatists wish theirs, let the will of the greater number be preferred to the fewer. But if the parties are equal, let it be assigned to the bishop of greater time. But if there are found to be so many places in which both parties have existed that they cannot be divided equally, as if they are an odd number, after *those* places that have an equal number have been distributed, as to whatever place remains, let what was said when one place was treated above be observed concerning it.

Chapter II

Latin source headnote: On Sundays and feast days parish priests ought not admit the parishioners of others to mass if they come to their church from contempt.

From the Council of Nantes.

That on Sundays or feast days priests, before they celebrate mass, question the people whether there is in the church a parishioner of another who, having despised his own priest, wishes to hear mass there; and if they find him, let them immediately cast him out of the church.

Chapter III

Latin source headnote: A bishop cannot ordain another's parishioner without that bishop's license, nor otherwise judge him.

Pope Hadrian.

Let no bishop presume to judge another's parishioner, [*retain him, or ordain him without the other's will, or judge him, because, just as his ordination will be invalid, so also will his adjudication, since we hold that no one is bound by the sentence of a judge other than his own.*] For he who could not ordain him can in no way *at all* judge him.

Chapter IV

Latin source headnote: The boundaries of parishes that are established, or things adhering to the boundaries, cannot be acquired by prescription.

Urban III.

But concerning that as to which we have understood there to be doubt among you—whether what is known to have been established by the canons concerning boundaries and things adhering to boundaries not being subject to prescription is to be admitted in the limits of parishes as in those of provinces—*we* answer you that it seems well to be observed in each, if the boundaries *of the provinces* are established by lawful proof or otherwise by undoubted faith to have been fixed by ecclesiastical ordinance.

Chapter V

Latin source headnote: If a parishioner or diocesan transfers his domicile, the former prelate does not vindicate episcopal or diocesan rights over him for himself; nevertheless, predial tithes are owed to him from that parish, unless they are owed to another by custom.

Celestine III.

Our *venerable brother,* the Bishop of Acre, signified to us that, since after the recovery of the city of Acre a great many persons transferred themselves to dwell in it who before the general occupation of the Holy Land had chosen a [*permanent*] dwelling in other cities of the Kingdom of Jerusalem, *and had made some residence in it and still even reside in the same, the prelates of the aforesaid cities compel them to pay ecclesiastical rights to themselves.* But because we ought not to transgress the boundaries established by the fathers or *put the sickle into another's harvest,* [*by apostolic writings*] we command your fraternity that, after [*prior admonition,*] you compel the prelates of the aforesaid places, with the severity that is fitting, to usurp no jurisdiction over the aforesaid inhabitants of Acre for themselves, nor to exact temporal things from those to whom they do not minister spiritual things; in such a way, *nevertheless,* that, if they receive fruits from fields constituted in the prelates' parish and in the regions overseas tithes are paid by reason of estates, they henceforth pay those *tithes* to them in their entirety, but are compelled to answer to the said Bishop of Acre concerning the other things as to their own diocesan bishop. [*But if not all, etc. Given at the Lateran, on the tenth day before the Kalends of January.* 1198.]

Title XXX: On Tithes, First Fruits, and Offerings

Chapter I

Latin source headnote: It expresses four kinds of tithes that were owed under the Old Law.

Jerome, on Ezekiel.

Under the law the people owed a tenth part of all produce to the Levitical tribe. Again, from those tithes the Levites—that is, the rank of inferior ministers—gave tithes to the priests. There were also other tithes that each person from the people of Israel separated in his storehouses, so that he might eat them when he went to the temple in the city of Jerusalem and invite the priests and Levites to a banquet in the vestibule of the temple. There were also other *tithes* that they stored up for the poor. But the first fruits that they offered from the produce were not defined by a specific designation but left to the choice of those making the offering. We have also received a tradition of the Hebrews, not commanded by law but grown established by the choice of the teachers, that those who gave the most gave a fortieth part to the priests, while those who gave the least gave a sixtieth; between the fortieth and the sixtieth it was lawful to offer whatever they wished. Therefore, what was left doubtful in the Pentateuch is specifically defined here on account of the avarice of the priests, lest they exact more from the people in the offering of first fruits, *that is, that a sixtieth part be offered of the things produced from the earth. For if the cor, which in Hebrew is called gomor and by the Septuagint is termed gomor, contains thirty modii in dry kinds as well as liquid, while the cophi and the bath are a tenth part of a cor, it is also commanded that a sixth part of the cor, the cophi, and the bath be given to the priests in offering first fruits. It is clearly calculated that this makes half a modius from three modii, which sixtieth part of the first fruits the priests ought to receive. Meanwhile, concerning these things, according to the letter and the Hebrew truth, let it suffice both to have understood and to have heard.*

Chapter II

Latin source headnote: It cannot fittingly be summarized on account of the variety of readings.

Paschal II.

It is a new kind of exaction that clerics exact tithes *of produce or animals* from clerics, since nowhere do we read this in the law of the Lord. For the Levites are not read to have received *or extorted* tithes from Levites. Assuredly, those clerics who receive from clerics the labors of spiritual ministries owe them tithes [*of their labors.*]

Chapter III

Latin source headnote: An agreement concerning tithes is not taken away by a subsequent privilege if it makes no mention of that agreement.

Hadrian IV, to the Bishops of Worcester and Hereford.

We have learned from the manifold complaint of V., priest *of Cretona,* that, *although he had peacefully possessed the church of Cretona for thirty years and more, within these four years the monks of Brueria entirely withdrew from him and the church all the tithes that the same church had always been accustomed to receive from the cultivated lands from its first foundation,* although, more than *twenty years and more having elapsed,* such an agreement had intervened between the abbot of Brudeia, *named W.,* with the consent of the whole convent, and the aforesaid priest, confirmed by an authentic writing of the monks: the monks would pay in full to the *said* priest and his church, for as long as he lived, the tithes of grain and all legumes, except the lesser tithes, which the same priest had declared quit *for the advancement of the monks' church. And although the agreement had been observed during the times of three abbots of the aforesaid place,* the same abbot, *coming to our presence,* obtained from us a privilege *in which it was granted to his monastery* that they should be bound to pay tithes to no one from the labors they cultivated by their own hands or expenses. *Indeed, after he returned home, he found so much favor with Henry, the illustrious King of England, that the king conferred upon his monastery in perpetual alms the whole land of that village in which the church of the aforesaid priest is situated. This having been done, the aforesaid abbot, after expelling all the tenants of that village and cultivating at his own expense the whole land of the aforesaid parish, withdrew the revenues owed to the church.* Hence, because it was not our intention through our [*aforesaid*] privilege to derogate from the aforesaid agreement, *by apostolic writings directing* your fraternity, we command that, *after summoning each party before you, you inquire more fully into the truth of the matter; and, if such an agreement was made between the predecessor of the aforesaid abbot and the aforementioned priest with the consent of the monks, and was observed for a year,* you compel the same abbot and monks inviolably to hold and observe the same agreement *or composition,* notwithstanding the said privilege unless, *which we do not believe,* that *transaction* is contained in it, or peacefully to reach an agreement with him thereupon, *and to pay him the revenues* [*in full*] *according to the form of the composition,* occasion and appeal being set aside; *you are by our authority to admonish and more strictly* compel them. *But if both of you, etc.*

Chapter IV

Latin source headnote: Monks are bound to pay predial tithes from newly cultivated estates from which tithes were paid previously.

The same, to Thomas, Archbishop of Canterbury.

The office of dispensation committed to us *by God admonishes and exhorts us in many ways that we ought usefully to provide for all the churches of Christ and that we must preserve their rights whole and unimpaired.* It has [*indeed*] come to us that the monks of Bosse do not pay tithes in full to the church of Saint Mary, in whose parish they dwell, *and contradict rendering them* [*according to the canons.*] Therefore, *our brother,*

by apostolic writings we command *and direct* you to compel them, *with all severity by our authority and without the obstacle of appeal,* to pay to the aforesaid church *those* tithes *also* from cultivated lands on which houses had once been constructed, with the same integrity with which they were accustomed to be paid before they dwelt in the same parish. And just as tithes were also formerly paid from pastures, so now we will that tithes be paid without diminution from those same lands converted to the fertility of crops.

Chapter V

Latin source headnote: A person is compelled by excommunication to pay tithes from mills and the other things contained here and in the following chapter. This it says together with the following chapter.

Alexander III, to the Archbishop of Canterbury and his Suffragans.

It has come to us *that, although your parishioners were accustomed to pay in full to the churches to which they are owed the tithes of their goods, now, nevertheless, the laudable custom being omitted, certain of them do not fear to withhold from those churches tithes from wool and hay and from the revenues of mills and fisheries. Therefore, because those who do not pay tithes to those churches more manifestly oppose the divine institution, by apostolic writings directing* your fraternity, we command that you take care to admonish your parishioners and, if there is need, compel them under the severity of excommunication to pay in full to the churches to which they are owed the tithes from the revenues of mills *and* fisheries, *from* hay and wool, *all contradiction* [*and appeal*] *ceasing*.

Chapter VI

Latin source headnote: It is summarized together with the preceding chapter, and explain it as was said in the preceding chapter.

The same, to the Bishop of Winchester.

We received the messengers *and letters of your fraternity with the kindness that was fitting, and, so far as was lawful, we took care to hear your petitions, as those of a person whom we love in the Lord with pure and fervent charity and to whose advantages and advancement we wish diligently to attend. Since, therefore, those things in which you desire to be fortified by the authority of our command pertain to your office, you ought to have been heard the more easily in these matters insofar as they more specially regard the salvation of those concerning whom you will render an account at the final judgment. Hence it is that by apostolic writings directing* your fraternity, we command that you compel your parishioners by ecclesiastical severity to pay tithes from bees and from every fruit.

Chapter VII

Latin source headnote: A tithe of fruits ought to be paid immediately when they are gathered, expenses not being deducted.

Alexander III, to the Bishop of Exeter.

Since the men of Horton, *according to the general custom of the English church,* are bound to pay without diminution to the church *of Saint Michael,* whose parishioners they are, a tithe from *their crops in autumn,* nine parts being retained for themselves, and before they do this they pay to their servants

and hirelings from the untithed crops what is owed for their service during the whole year, only then paying a tithe from the residue, *by apostolic writings directing* your discretion, we command that you compel them *under the severity of anathema* to pay the tithe, *both from crops and from the increase of their animals, without fraud or any diminution in autumn, as is customary,* immediately after the fruits have been gathered, *and at other times according as they are owed,* and to take care to furnish worthy satisfaction concerning the things withheld and retained.

Chapter VIII

Latin source headnote: Those privileged concerning not paying tithes are bound to pay a tithe from those estates that they lease from others.

The same, to the Monks of Neuclen.

Our beloved sons the abbot and brothers of Holy Cross showed us by their complaint that you have leased from many laymen and received at farm estates from which they were accustomed to have tithes and a great part of their sustenance. Hence, because the same brothers are burdened *immoderately and* enormously by this, and it was not our intention or that of our predecessors that you should not pay tithes from possessions you leased, *directing your whole body,* we command that you pay in full *to the same brothers* the tithes from the estates you leased in their parishes, from which they were accustomed to receive tithes, or make such a *peaceful and* amicable composition with them *that no matter of scandal ought to arise between you and you do not appear to extend your hands beyond what was granted to you.*

Chapter IX

Latin source headnote: A privilege is revoked if afterward it begins to be enormously harmful.

The same, to the Abbot and Brothers of Dol.

It was suggested *to us* on your part that the abbot and brothers of the monastery of Ursin endeavor to take tithes away from you *and do not cease to inflict other damages and burdens upon you. But because it does not become monastic honor or religion to attend to lawsuits and contentions, by apostolic writings* we command, *counsel, and exhort* your discretion to make a *peaceful* composition with the aforesaid abbot and brothers concerning those tithes *and the other things concerning which there is controversy between you, lest the reputation of your religion be blackened because of contentions of this kind.* For when the Roman church had given privileges concerning tithes to your order, the abbeys of your order were so rare [*and very poor*] that no scandal could rightly arise to anyone therefrom; but now, *by the grace of God,* they have been increased to such a degree and enriched with possessions that many ecclesiastical men frequently propose a complaint against you before us.

Chapter X

Latin source headnote: Cistercians, Templars, and Hospitallers are not bound to pay the tithe of their estates that they cultivate by their own hands or expenses; but other religious do not pay tithes from gardens and the increase of animals, nor from newly cultivated lands that they cultivate by their own hands and expenses.

The same, to the Archbishop of Tarragona.

You should know that it has come to us on your part that white monks and black monks, and certain other *religious* men, presume, by occasion of privileges that the Roman church granted them, to despoil churches of your jurisdiction of revenues from tithes. Indeed, we do not wish you to be unaware that our predecessors *of holy memory* had granted to almost all religious tithes from their labors. But our predecessor of good memory Hadrian granted only to the brothers of the Cistercian order, the Templars, and the Hospitallers tithes from their labors that they cultivate by their own hands or expenses; but to the others he *granted* that they not pay tithes from their newly cultivated lands that they cultivate by their own hands or expenses, from the increase of their animals, and from their gardens; and we have imitated him concerning these things. Wherefore those to whom this was granted neither *ought* nor can, by this occasion, withhold from their church tithes from other things or vindicate anything further for themselves.

Chapter XI

Latin source headnote: A privilege concerning tithes from labors does not extend to lands that are delivered to others to be cultivated.

The same.

Although by the kindness of the Apostolic See it was granted to you that you be bound to pay tithes to no one from *your* labors that you cultivate by your own hands or expenses, nevertheless on account of this it is not lawful for you to withhold tithes *from anyone* from your lands that you deliver to others to be cultivated. *Indeed, it has been reported to our ears that, although you give to your peasants to be cultivated certain lands that you have within the tithing district of our beloved son the treasurer of Sens, you do not pay him the tithes therefrom as you ought, nor cause them to be paid by the peasants themselves. Therefore, insofar as we more closely love you and your order, we wish the less to effect things contrary to honor or opposed to reason, or things through which you appear to transgress the tenor of our privileges, since he who abuses the power permitted to him is seen to lose his privilege. We command your fraternity that you in no way presume to usurp for yourselves the tithes from those lands within the tithing district of the aforesaid treasurer that you do not cultivate by your own hands but deliver to peasants to be cultivated, but cause them first of all to be paid in full to the same treasurer; knowing for certain that if you contemn our command, we have given mandate to our venerable brother the Archbishop of Sens that, appeal ceasing, he strictly compel the peasants to whom you shall have given lands within the tithing district of the aforesaid treasurer to be cultivated to pay* [*the*] *tithes therefrom to the same treasurer.*

Chapter XII

Latin source headnote: A privilege concerning tithes from labors comprehends even those things that are not newly cultivated lands.

The same.

You should know that it has come *to our hearing that certain of you endeavor to exact and extort tithes from our beloved sons the abbot and brothers* [*of Pipennella, who are*] *of the Cistercian order, from the labors that they cultivate by their own hands or expenses,* perverting by a *malicious and* depraved interpretation that chapter of the privilege *of the Apostolic See* by which it is granted to the Cistercians that no one exact tithes from them from the labors that they cultivate by their own hands or expenses. For *they* assert that newly cultivated lands ought to be understood by "labors." *Hence, because we wish to foster the brothers of*

the aforesaid order by apostolic kindness, and to provide more attentively that no one have matter for acting malignantly against them or for molesting them in any manner contrary to justice, by apostolic writings directing your fraternity, we command that you not permit this to be done. For if we meant only newly cultivated lands where we put "labors," we would put "newly cultivated lands," *as we put it in the privileges of certain others.*

Chapter XIII

Latin source headnote: Tithes of newly cultivated lands are owed to the church in whose parish they arise; but if they are not in a certain parish, they are owed to the diocesan bishop, who can retain them for himself or grant them to another church.

The same, to the Bishop of Brescia.

Since your solicitude asked of us what is to be established for you concerning the tithes of newly cultivated lands in your diocese, *by intimation of the present writing to your fraternity* we answer that, if *those* lands that are arable are within the definite parish of some church, *you,* retaining your portion, are to cause their tithes to be assigned to the same church; otherwise you can, according to the discretion given to you by God, assign them to another church or retain them for your own use, *in such a way indeed that, if anyone presumes to act contrary to these things, you strike him with ecclesiastical censure until worthy satisfaction. But you are to decree invalid the sentences given by consuls concerning tithes, especially since they oppose the institutes of the holy Fathers, and revoke them, every contradiction and appeal being set aside. If any layman seeks tithes from priests or clerics from their labors in your diocese, you are to compel him wholly to cease from an exaction of this kind; and those laymen who receive from tenants a third or fourth part of their labors before payment of the tithes, you are to cause, without any diminution, to furnish to those to whom they are owed by right a tithe from their own portion, according as the tenant was accustomed to pay it from the part falling to him.*

Chapter XIV

Latin source headnote: Tithes can be exacted.

The same, to the Archbishop of Rheims.

You ought, *however, to compel your parishioners by ecclesiastical severity to pay tithes to the churches to which they owe them, because,* since tithes were instituted not by man but by the Lord himself, they can be exacted as a debt.

Chapter XV

Latin source headnote: A tithe cannot be granted to a layman by hereditary right.

The same, to the Bishop of Amiens.

In addition, because the sanctuary of God ought not to be possessed by hereditary right, you are to *revoke as utterly invalid and* decree to lack force the donation of a tithe that the abbot of Saint S. de Monstral granted to a certain layman to be held by succession; and you are to bind the layman with the bond of excommunication unless he has freely *and absolutely* resigned that tithe to the church itself.

Chapter XVI

Latin source headnote: Jews are compelled to pay predial tithes or relinquish the estates.

The same, to the Bishop of Marseille.

But concerning the lands that Jews cultivate, we answer your prudence that you compel them with all severity to pay tithes or utterly to renounce the possessions, lest perhaps by that occasion the churches be defrauded of their right.

Chapter XVII

Latin source headnote: Tithes or offerings of a church cannot be granted to laymen, and a prelate who acts contrary to this is to be punished.

The same.

Although it is held to be exceedingly grave and worthy of the retribution of divine judgment that certain laymen usurp in ecclesiastical matters what belongs to priests, nevertheless they incur greater fear *and sorrow* because they are said sometimes to find the tinder of their error in the clergy itself, when certain *of our brothers and fellow bishops and other* prelates grant them the disposal of the tithes and churches [*themselves*] of the church, and impel into the byways of death those who ought to have been recalled to the way of life by their preaching. *Concerning them the Lord says through the Prophet: "They eat the sins of my people and provoke their souls to iniquity." Hence* we establish that, if anyone grants to any layman remaining in the world a church, tithe, or offering, he is to be cut down from his station like a tree that uselessly occupies the earth, and, until he makes amends, is to lie prostrate in grief at his own ruin.

Chapter XVIII

Latin source headnote: Custom is followed as to whether a tenant pays a tithe to the church in whose parish the estates are situated, or to the church where he hears divine services and receives the ecclesiastical sacraments.

The same.

Since, as you assert, there are men in the parish of one church who cultivate lands in another parish, your discretion consulted us as to which church they ought to pay tithes from those lands: *whether to that in whose parish they are constituted or to that in which they hear divine services and receive the other ecclesiastical sacraments.* Indeed, *since a question of this kind was moved rather often in the times of our predecessors and was terminated by none, some asserting that they ought to be paid by consideration of territory, others by consideration of persons,* it is not easy for us to give a certain response concerning this, since the authorities of the holy Fathers are also diverse. And therefore in a doubt of this kind we have thought recourse should be had to custom; and it must also be considered whether those churches are constituted in one bishopric or in different bishoprics, because it seems exceedingly difficult that one church should receive tithes in the bishopric of another, since from this the boundaries of bishoprics would not unreasonably appear to be confused. [*But that, etc.; cf. c.* 8, *On Prescription, II.* 26.]

Chapter XIX

Latin source headnote: A layman cannot transfer a tithe to another layman, even if he possesses it with title. This it says together with the gloss.

From the Lateran Council.

We *further* prohibit laymen who detain tithes at peril to their souls from transferring them in any manner to other laymen. But if anyone receives one and does not return it to the church, let him be deprived of Christian burial.

Chapter XX

Latin source headnote: A personal tithe is owed to the church where someone receives the sacraments, although profit occurs elsewhere; but as to a predial tithe, custom is followed if a tenant cultivated an estate in another parish.

Lucius III, to the Archbishop of Esztergom.

Called to the governance of the Apostolic See *by divine favor, although undeserving, we are debtors to all the sons of the church and are compelled, according to the measure of our knowledge, to answer the consultations of each.* We have *moreover understood from your letters* that a certain custom has grown established in Hungary: a multitude of people is very often transferred from the parish of one bishop into the diocese of another. Although it remains in the latter for many periods of time, each of the bishops—both he whose parish they left and he whose parishioners they have become—nevertheless seeks the tithe, [*and subjects them to interdict unless they pay according to his will,*] *whence envy and* [*very many*] *contentions arise.* And therefore your fraternity led you to consult us as to whom the tithes should rather be rendered. You should therefore know that, *if tithes are paid from a craft, trade, and agriculture that one exercises within the boundaries of the parish in which he dwells, or from other things of this kind,* it is equitable that personal tithes be rendered by them to that church in which they receive the ecclesiastical sacraments. *For the Apostle says: "If we have sown spiritual things for you, etc."* But as to tithes from crops or the fruits of trees, if they have cultivated them in another parish than the one in which they dwell, since a different custom is maintained by different persons, in this case you are to choose what you know to have been observed there through long-established custom.

Chapter XXI

Latin source headnote: Tithes are to be paid from every fruit of an estate.

Clement III.

A complaint was proposed to us on the part of *our beloved sons,* the canons of your church, that certain farmers, when together or [*at*] diverse times of the year they have scattered diverse seeds in the same garden or field, pay a tithe to it only from the fruits of one of those seeds; *certain persons also do not take care to pay tithes from the produce of fields unless certain expenses that they incur in carrying them to the barn or threshing floor have* [*first*] *been deducted. Therefore, because through this no small injury is inflicted upon the canons themselves and the church of God, since it is enjoined that tithes be paid to the Levites without expenses,* we command that, *after inquiring more diligently into the truth,* if you know the matter to stand thus, you compel those farmers by ecclesiastical censure, *all contradiction and appeal ceasing,* to pay tithes from all the fruits of the estates, *no expenses being subtracted, but rather whole* tithes *and* without diminution; *and*

by our authority strictly forbid them from attempting such things hereafter through any greed or presumption. [*Given at the Lateran, in the third year.*]

Chapter XXII

Latin source headnote: Predial tithes are to be paid without expenses being deducted.

Celestine III.

It is not in the power of men, when they plant trees or commit any seeds to the earth, *what the sowing or planting will return to them, since, according to the word of the Apostle, to be expounded according to the letter, neither does he who plants do anything well, nor he who waters, but God, who gives the increase. But we have heard that certain of you take care to furnish tithes to the churches from vineyards, olive groves, sugar canes, and crops only after the expenses of seed, labor, and cultivation have first been deducted.* In truth, as the holy Fathers handed down in their writings, tithes are to be given to the ministers of the church from wine, grain, fruits of trees, flocks, gardens, *and* trade, even from military service itself, *and* from hunting, and from all goods; *also* in such a way that those who have neglected to pay them from these things ought to be struck with ecclesiastical severity. *Moreover, if anyone does not give the Lord tithes, which are the tributes of needy souls and are required as a debt, he deserves, as Augustine teaches, to be reduced to a tenth part.* We therefore will and strictly command that, before you deduct any expenses from *all your* aforesaid goods, *saving the privileges of the Roman church,* you pay in full the tithes owed to the churches to which they pertain.

Chapter XXIII

Latin source headnote: Tithes are to be paid from the revenues of a windmill.

Celestine III.

From the transmitted complaint *of Bertrand, Archdeacon of Dol,* rector of the church of N., we understood *that, although M., a knight, constructed a certain windmill on certain land within the boundaries of his parish, from the produce of which land the aforesaid church was accustomed to receive tithes, he, contradicting payment to him of tithes from the proceeds of the mill itself, does not fear to retain them at peril to his salvation.* Therefore, because a faithful man is bound to dispense tithes *without diminution* from all things that he can lawfully acquire, *by apostolic writings* we command your discretion that, *through ecclesiastical censure, the obstacle of appeal being removed,* you compel the knight H. to pay tithes without any diminution from the things that proceed from the *aforesaid* windmill.

Chapter XXIV

Latin source headnote: The lessor or lessee of possessions is bound for tithes unless they show themselves exempt.

Innocent III, to the Bishop of Pistoia.

Your fraternity asked of us *whether you ought to exact tithes from those who give or receive possessions at rent, since each endeavors to excuse himself through the other so that they are not compelled to pay tithes.* Since, therefore, everyone is bound to pay tithes unless he is specially exempt from furnishing them, we answer your fraternity in this manner: tithes are to be paid from the fruits they receive by those giving and receiving possessions at farm, unless *something* is shown by them as to why they are

immune from such tithes. [*With clerics, etc.; cf. c.* 9, *On the Cohabitation of Clerics, III.* 2. *Given at the Lateran, on the fourth day before the Nones of December.* 1199.]

Chapter XXV

Latin source headnote: An imperial grant under whatever form cannot exempt from the payment of tithes.—(Nor by occasion, etc.:) Tithes of newly cultivated lands do not pertain to a layman who has tithes in fief. This it says.

The same, to the Bishop of Vercelli.

Your—(*And below:* [*cf. the chapter immediately following.*]) Moreover, since no faculty of granting or disposing *of* spiritual things has been attributed to laymen, an imperial grant, however generally it may be made, cannot exempt anyone from payment of tithes that are owed by divine constitution. Nor, by occasion of an ancient tithe, although tithes have been granted in fief, are tithes of newly cultivated lands to be usurped, since in such matters license is not to be extended but rather restricted. [*Therefore, since, etc.; cf. the chapter immediately following.*]

Chapter XXVI

Latin source headnote: Without deduction of seed and expenses, the lord and the tenant ought to pay a tithe, and not to whatever church or poor persons they wish, but to the church to which they are owed; nor are they excused from this because of the wickedness of the clerics.

The same, to the same.

Your fraternity intimated to us that certain laymen *of your diocese, and many others of the neighboring bishoprics,* endeavor by perverse machinations to withdraw tithes from your churches and clerics, *and do not take care to amend by due satisfaction the audacity of the perversity they conceived.* For some of them say that the seed and the expenses incurred in cultivation are first to be deducted, and assert that a tithe is *to be* furnished from the residue. But others, separating a part of the tithe from the portion of fruits that they receive from tenants, confer it upon their chapels, other clerics *or churches,* or even the poor, or convert it to other uses according to their will. Some also, detesting the life of the clerics as abominable, do not fear on this account to withhold tithes from them. *Certain persons further, asserting that they acquired their possessions and all their rights with every burden and jurisdiction through an imperial grant, presume to detain tithes under a generality of this kind. Moreover, by occasion of an old tithe that they assert was granted to them, some do not fear to usurp for themselves the tithes of newly cultivated lands.*

But if assertors of this kind had due regard for God, from whom all good things proceed, they would not contend to diminish ecclesiastical right, nor presume to detain tithes, which are the tributes of needy souls. For since God—to whom belong the earth and its fullness, the world and all who dwell in it—ought not to be of a worse condition than a temporal lord, whose established *due* from the lands that he furnishes to others to be cultivated is necessarily paid in full, without expenses indeed being deducted or seed separated, it assuredly seems exceedingly iniquitous if tithes, which God commands to be rendered to himself as a sign of universal dominion, affirming tithes and first fruits to be his own, can *perhaps* be diminished by the aforesaid occasion or rather by devised fraud, since payment of tithes is owed to God to such a degree that laymen, if after being admonished they *perhaps* refuse to render them, are to be compelled by ecclesiastical severity to furnish them to the clerics to whom he granted them for his worship. And since tithes are to be rendered from absolutely all

proceeds, just as the tenant is bound to render without diminution a tithe from the part of the fruits that remains to him by reason of cultivation, so also is the lord bound to render it from the portion he receives by reason of the land. Under pretext of the wickedness of the clerics they cannot dispense them *to others,* except those to whom they are owed by divine mandate, according to their own judgment, since it is lawful for no one to grant another's property to anyone apart from the will of the lord, *although through the solicitude of the pastoral office the clerics are to be restrained from their wickedness. (And below:* [*cf. the chapter immediately preceding.*]) Therefore, since we do not wish, *nor ought we,* to permit the rights of churches and clerics to be diminished by any presumption, *by the authority of the present writing* we command your fraternity that, appeal being removed, you compel *by apostolic authority through a sentence of excommunication or interdict* all those who are bound by reason of persons or even estates to furnish tithes to the churches and clerics of your diocese to render them in full. *Moreover, so that you may be able to compel the clerics of your diocese concerning whom a complaint has been proposed in your court to do full justice under your examination concerning the aforesaid tithes and fruits received, notwithstanding the objection of an appeal interposed to elude ecclesiastical discipline, we have thought that this should be granted to your devotion by the page of the present writing.*

Chapter XXVII

Latin source headnote: A privilege concerning tithes not to be paid, granted to an ecclesiastical person, comprehends newly cultivated lands. This it says according to the understanding that pleases Panormitanus.

The same, to the Abbot of Saint Columba of Sens.

On your part *it was petitioned of us that, since, as you assert, it was granted to you to receive in full the tithes from the labors of your parishes, we mercifully grant you that from lands within your parishes that are newly reduced to cultivation you have, by our indulgence, the faculty of exacting tithes.* Since, *therefore,* the greater thing was granted to you—namely, to receive in full tithes from the labors of the land of your parishes—you can sufficiently exact them from newly cultivated lands, because where the greater is granted *to you,* the lesser *also in this case* is seen to have been granted. [*Given at Rome at Saint Peter's, on the sixth day before the Ides of March, in the ninth year of our pontificate.* 1206.]

Chapter XXVIII

Latin source headnote: A merchant pays a tithe from profit after deducting expenses that he incurs from tithed money; but expenses incurred for obtaining fruits are not deducted, and a tithe is paid from the fruits even without deducting expenses incurred for restoring the thing.

The same, to the Bishop of Ely.

Of the pastoral office—*(And below:* [*cf. c.* 28, *On the Office of a Delegated Judge, I.* 29.]) You asked *further* that it be explained whether someone can deduct necessary expenses from mills and fisheries before he pays tithes from them, as is granted in trade. To this, *without prejudice to a better opinion,* we answer that, although concerning things acquired or made from tithed money, when they are sold, we believe expenses are to be deducted and tithes paid from the residue as from profit—as if a house, field, vineyard, oven, mill, flock, or any merchandise is sold—nevertheless, we do not believe that expenses incurred for receiving fruits are to be deducted from those things from which the fruits proceed, even if they have been tithed, since, saving the tithe, the fruits become those of the persons who incur

those expenses. But we do not believe the fruits themselves can be alienated except with the burden of tithes. Nor do we believe expenses are to be deducted from proceeds to be tithed for restoring damage to any things from which tithes are paid, because the restored things remain with the owner, as if some part of a herd dies, a vineyard deteriorates, a portion of merchandise perishes, or an entire oven is destroyed. [*You asked, etc.—cf. c.* 8, *On the Faith of Instruments, II.* 22.—*Given at Rome at Saint Peter's, on the fourteenth day before the Kalends of January.* 1204.]

Chapter XXIX

Latin source headnote: One who acquires by prescription a tithe in another's parish will not have their tithes if newly cultivated lands arise there.

The same.

When it sometimes happens in your diocese—(*And below:* [*cf. c.* 28, *On Oaths, II.* 24.]) *Moreover, you asked whether, when any estates from which tithes were paid to churches or ecclesiastical persons devolve upon the Cistercian order by donation, purchase, or another title, the same brothers are bound to pay tithes from such estates to those churches or persons. Concerning this we give you such a response: since it was granted to the aforesaid brothers by the Apostolic See that they are bound to pay tithes to no one at all from their labors that they cultivate by their own hands or expenses, they are not bound to pay tithes from estates acquired in this manner to churches or ecclesiastical persons, provided they are cultivated by their own hands or expenses.* But since from antiquity the receipt of tithes in certain parishes pertains to certain churches or ecclesiastical persons, and newly cultivated lands are made anew in the same parishes, you ask us to whom the tithe of such newly cultivated lands begins to pertain. Hence we answer your inquiry in this manner: since the receipt of tithes pertains by the common law to parish churches, the tithes *also* of newly cultivated lands that are made in their parishes are undoubtedly known to pertain to them, unless a reasonable cause is shown by those who otherwise receive the tithes, through which it appears that the tithes of the newly cultivated lands pertain to them. [*Given at the Lateran, on the sixteenth day before the Kalends of June, in the third year.* 1210.]

Chapter XXX

Latin source headnote: The tithe of all fruits of an estate is owed to him who acquired the tithes there by prescription; but prescription is not extended to another estate.

The same, to the Bishop of Beauvais.

Since in your diocese certain monasteries and conventual churches receive greater and lesser tithes in many parishes, [*and*] tithes were not paid from certain fruits received annually [*that are now, however, paid,*] *you asked to be taught by the Apostolic See whether the tithes of the aforesaid fruits ought to pertain to the parish churches, which receive neither greater nor lesser tithes, or to the monasteries and those conventual* [*churches*] *that receive other tithes from antiquity. To this we* answer thus: if the aforesaid fruits proceed from that land from which the monasteries or conventual churches received some revenues by reason of tithes, the tithes of those fruits are undoubtedly owed to them, since that land was titheable to them from antiquity and one and the same church ought not to be assessed under diverse law; otherwise, let them be paid to the parish churches, to which the receipt of tithes pertains by the common law. [*Indeed, because it happens, etc.—cf. c.* 27, *On Betrothals, IV.* 1.—*Given at the Lateran, on the fourth day before the Kalends of November, in the fifteenth year of our pontificate.* 1212.]

Chapter XXXI

Latin source headnote: Laymen cannot donate churches or tithes, even if they are kings, nor is a basis for prescription furnished by their title.

The same, to the Bishop of Veszprém.

Some time ago, when in our presence you proposed a question against the brothers of the Jerusalem Hospital of Saint Stephen *of Alba,* because they did not permit the tithes owed to the church of Veszprém from the labors of their peasants to be paid to you, *we cited them, fixing the general council as their term, at which they should present themselves before us with their instruments and reasons, prepared to answer you.* Therefore, when you and they appeared before us at the appointed term, we appointed *our beloved son* G., cardinal priest *of the title of Saint Martin,* as auditor for you and them. Before him you sought the tithes of the lands that are cultivated by the peasants of the hospital in the diocese of Veszprém, and the churches of Ciroga and Novacularia that are detained by those Hospitallers, *as pertaining to you,* your intention being founded upon the common law. But the prior of the *same* hospital, alleging prescription as to the aforesaid tithes and churches, proposed that he was in no way bound to answer you concerning them. When this came to our hearing through the *same* auditor, we commanded that the same prior prove the title of prescription that he alleged. *Finally, after prior deliberation, before our venerable brother the Bishop of Albano, who heard the cause after the departure of the aforesaid cardinal,* he exhibited privileges of B., king of Hungary *of illustrious memory,* and of *E., his mother,* the queen, who granted by title of donation in perpetual alms to the hospital the church of Saint Stephen, to which the said churches with the same tithes pertained. He also exhibited a writing of confirmation of our predecessor Pope Clement *of good memory,* through which he wished to prove that the aforesaid grant had full force, *and asserted nevertheless that it was afterward confirmed by our predecessor Pope Lucius of happy memory.*

But on your part it was proposed *in opposition* that, as to the tithes and *the* churches donated by the king and queen, the opposing party could not plead prescription, which could neither take its beginning from their donation, nor had so much time elapsed from the aforesaid confirmation that prescription could be confirmed; and thus the alleged title of the donation of the king and queen was null, since according *to the canonical sanctions* he incurs the crime of sacrilege who receives churches or anything ecclesiastical from the hand of a layman. *Hence, if it happens that a layman uses such words in the donation of a church, "I give you such a church," he is understood to grant nothing other than only the right of patronage that he has in it, as is expressly contained in a constitution issued by us. But against the confirmation it was answered in this manner: since the church of Saint Stephen itself is confirmed indiscriminately with all tithes, churches, and other things that pertain to it, episcopal right is not taken away, since it is not expressed there, but only the due portion of tithes conferred within the parish of Saint Stephen is reserved to the same Hospitallers according to the custom of the land; especially since the tithes sought by you do not lie in the parish of Saint Stephen, which the opposing party confessed openly. On the contrary, it was replied by the other party that, since you had remained silent for a space of thirty years, you were seen tacitly to have renounced your right. But your party appeared to repel this also by alleging that silence of thirty years is known to obtain not under the common law but under privileges; hence a bishop is deprived of the common-law right he has in the tithes or churches of his diocese only by silence of forty years.*

We therefore, *having understood more fully these and the other things proposed on each side,* since the aforesaid donors could not confer upon others things that they could not themselves possess by law, and *since*

from the confession of the opposing party it is clearly established to us that the tithes and churches sought are not contained within the parish of Saint Stephen, even if the aforesaid donation holds, and since through the aforesaid confirmation of Clement made to the hospital concerning the church of Saint Stephen with its tithes and other appurtenances, even if it appeared authentic, there is no derogation at all from episcopal right, *with the counsel of our brothers, by apostolic authority,* we prohibit by sentence the brothers of the hospital from presuming further to impede you from receiving the aforesaid tithes and peacefully possessing them in the future.

Chapter XXXII

Latin source headnote: Lords of estates can be compelled to give the estates for cultivation to such persons from whom the church can obtain tithes without contradiction. This it says as far as the section "Those."—(Those, etc.:) This section is not summarized on account of its brevity.

The same, in the General Council.

In certain regions some peoples are intermingled who according to their rites do not customarily pay tithes, although they are designated by the Christian name. Certain lords of estates give them those estates to cultivate so that, by defrauding the churches of tithes, they may obtain greater revenues therefrom. Wishing, therefore, to provide in these matters for the indemnity of the churches, we establish that the lords themselves commit their estates to such persons and in such a manner to be cultivated that they pay tithes in full to the churches without contradiction, and, if necessary, that they be compelled to this through ecclesiastical censure. For those tithes must necessarily be paid that are owed under divine law or the approved custom of the place.

Chapter XXXIII

Latin source headnote: Tithes are to be paid before rents or taxes, and if the latter are paid first, they ought afterward to be tithed.

The same, in the same council.

Since it is not in man what will answer the one sowing seed, because according to the word of the Apostle, "Neither he who plants is anything, nor he who waters, but God who gives the increase," certain persons strive too avariciously to defraud in tithes him who brings forth abundant fruit from deadened seed, first deducting from the crops rents and taxes, which sometimes pass away untithed. But since, as a sign of universal dominion, the Lord reserved tithes to himself as though by a certain special title, we, wishing to meet both the losses of churches and the perils of souls, establish that, by prerogative of general dominion, payment of tithes precede the exaction of taxes and rents; or at least that those to whom untithed rents or taxes have come—since a thing passes with its burden—be compelled by ecclesiastical censure to tithe them to the churches to which they are owed by law.

Chapter XXXIV

Latin source headnote: Cistercians, Templars, and Hospitallers are bound to pay tithes from the fruits of possessions that they acquired after the general council mentioned here, if tithes were previously paid from those possessions.

The same, in the same council.

Recently the abbots of the Cistercian order, assembled at the general council, prudently established at our admonition that hereafter the brothers of that order not purchase possessions from which tithes are owed to churches, unless perhaps for monasteries newly to be founded; and that, if such possessions are conferred upon them by the pious devotion of the faithful, or purchased for monasteries to be founded anew, they be committed to others to be cultivated, by whom tithes are paid to the churches, lest the churches be further burdened by occasion of their privileges. We [*therefore*] decree that from the lands of others and those to be acquired from now on, even if they cultivate them by their own hands or expenses, they pay tithes to the churches to which they were previously paid by reason of the estates, unless they have thought that another composition should be made with those churches. And we will and command that this same thing be extended to other regulars who enjoy similar privileges, so that the prelates of the churches may exist more ready and effective in furnishing them the completion of justice concerning their malefactors, and may take care to observe their privileges more diligently and perfectly.

Chapter XXXV

Gregory IX.

We forbid all ecclesiastical persons from presuming to receive as a pledge from laymen tithes detained by those laymen that pertain to other churches.

Title XXXI: On Regulars and Those Passing to Religion

Chapter I

Latin source headnote: A person cannot be admitted to religion unless willing and of suitable age.

From the Council of Mainz.

Let no one be tonsured unless of lawful age and spontaneous will.

Chapter II

Latin source headnote: A prepubescent person who entered a monastery cannot be recalled by his parents after a year. This it says first. A pubescent person who entered by force cannot leave or be recalled by his parents after a year. This it says second. The Sicilian Abbot.

From the same.

If anyone was tonsured before the lawful years without the consent of his parents, [*and*] if his parents have not *themselves* protested within a year to the prince, his own bishop, or a *missus dominicus,* let him remain in *that* clerical state. But if after the lawful years he was made a cleric by force, and neither he nor his parents protested within a year to the aforesaid persons, let him remain *thus* in the clerical state, like him concerning whom it was said above. [*But if the aforesaid persons, etc.*]

Chapter III

Latin source headnote: A secular cleric using the habit and name of a monk is compelled to become a monk or to desist from this.

From the Council of Toledo.

That clerics who pretend themselves *to be* monks in habit and name, and are not, be corrected *in every way and amended,* so that they are *either* true monks or true clerics.

Chapter IV

Latin source headnote: A female novice who voluntarily introduces herself into the acts of professed women is thereby deemed professed. This it says, and it is a very notable case.

From the Council of Arles.

If a widow voluntarily placed upon herself the veil of conversion, although not a sacred one, and offered an offering to God in the church among the veiled women, willing or unwilling she ought thereafter to have the habit of sanctimony, although she wishes to affirm by oath that she placed the veil upon herself with this tenor *and reason,* that she could *again* lay it aside.

Chapter V

Latin source headnote: A monk cannot rashly pass to another monastery or have a peculium.

Gregory, to Anthemius the Subdeacon.

John, our *brother and fellow bishop,* [*having sent*] *through Justus his cleric* [*a capitulary, is known to have intimated this to us among many other things: certain monks of the monasteries situated in the diocese of Sorrento migrate from monastery to monastery as they please and depart from the rule of their own abbot from desire for a secular thing; but also, what is known not to be lawful, each of them takes care for his own private property.*] *Therefore, by the present command we* mandate [*your experience*] that you permit neither a monk rashly to migrate *further* from monastery to monastery, nor any of them to have anything as private property. But if [*anyone*] presumes this, let [*him*] be returned by fitting coercion *in* the monastery in which he was first converted *and* under the rule of his abbot, *from which he had fled,* [*lest, if so great an iniquity, etc.*]

Chapter VI

Latin source headnote: Where a congregation or religion is harsh, full puberty—namely, the age of eighteen years—is required in one making profession. This it says, having regard to the mind of the letter, and it is a singular text.

From the Register of Gregory.

Because the congregation of monks on the islands is harsh, we prohibit the reception of boys into their monasteries before their eighteenth year *also. Or if there are any there now, let your experience remove them and send them to the city of Rome. We will that you observe this in all respects on Palmaria and the other islands.*

Chapter VII

Latin source headnote: If a Cistercian passes to another monastery without the license of his abbot, he is compelled to return to his own monastery.

Alexander III, to the Archbishops and Other Prelates of Churches Constituted throughout Gaul.

It is not doubtful *or uncertain to you how the religious brothers of the Cistercian order excel in such religion and virtue that, by the institution of the Fathers and our predecessors, those who make profession in their monasteries are prohibited from departing from the cloister without the license of their abbot, and those departing are prohibited from being received in other monasteries. Hence it is that we, wishing solicitously to preserve the same institution as not only friendly to religion but also consonant with reason, by apostolic writings directing* your whole body, command that you in no way permit monks or converts of the Cistercian order, after *profession made in the monasteries,* to be received throughout your bishoprics without the license of their abbots. And if there are any among them *who* presume to leave without the license of their abbots the monastery *in which they made profession,* and after being admonished do not quickly return *to their monasteries,* you are to strike them *so long with ecclesiastical censure, appeal being removed, until you compel them to return to the monasteries from which they departed.*

Chapter VIII

Latin source headnote: A profession made before the fourteenth year does not bind; but after the fourteenth year, if made through reception of the habit of the professed, it also does not bind unless perseverance for three days is given.

The same, to Master F., Canon of Città.

You should know that it has come to our hearing that the hermits of Montefoll. seduced certain boys *under the fourteenth year* to such an extent that certain *of them,* giving assent to their persuasions, immediately received the habit of religion in their monasteries. One of them, named T., immediately repented that he had put on the habit, *intimated to his parents what he had done, and they, coming to that place without delay, drew him out from there. And although, as we have learned, he had remained there for only one night, the aforesaid hermits and certain others do not permit him to take as wife a certain girl whom he swore to take as wife and, as is said, betrothed.* Wherefore, *by apostolic writings directing* your discretion, we command that, *after the truth of the matter has been diligently inquired into and learned,* if it is established *to you* that the aforesaid T. laid aside the habit he had received before completion of his fourteenth year, or if after his fourteenth year he received the habit without probation and laid it aside within three days, you declare him, occasion and appeal ceasing, to be *wholly* absolved from the impleading of the aforesaid hermits *or others in this respect,* and freely able to marry her whom, after he left, he swore to take as wife, if no other reasonable cause obstructs.

Chapter IX

Latin source headnote: One who receives the habit of the professed, where the habits are distinct, is compelled to be a religious there or elsewhere; but if he receives the habit of novices, he can return to the world.

The same, to the Bishop of Ely.

Concerning what was asked *of us on your part* about clerics who received the habit of religion and returned to their former state before profession, we answer *your fraternity in this manner:* if they are unwilling to observe the austerity of the religion to which they are known to have migrated, they are to be compelled to pass to a lesser religion. Nor ought they any longer to be received in secular churches, lest they be proved to act contrary to *their* vow, which they made to the Lord, *at peril to their souls.* But if, while placed on probation, they wished to depart before receiving a habit of this kind,

according to the Rule of blessed Benedict they do not appear to be prohibited from returning to their former state, which seems to command that they return in the same clothing in which they came. [*Moreover, etc.; cf. c.* 1, *On the Conversion of Spouses, III.* 32.]

Chapter X

Latin source headnote: A regular canon can become a monk if the religion to which he passes is stricter than his own; otherwise, it is otherwise.

The same, to the Bishop of Amiens.

Indeed, concerning the canon who had made profession in the church of Aromat and had fled from it, and was received as a monk by a certain abbot, we signify this to your fraternity: if the place where he now remains is of a greater religion than the church of Aromat, permit him to remain in the same place with a pure conscience; otherwise, compel him to return to his former church. [*Moreover, etc.; cf. c.* 3, *On Consecration, IV.* 19.]

Chapter XI

Latin source headnote: A person younger than fourteen years is not bound to religion by making profession unless, having become older, he ratified it.

The same, to the Bishop of Beauvais.

It was signified to us *and shown for certain that Guiboldus, not yet beginning to be fourteen years old, from fear of the master who was instructing him in letters, received the habit of religion at the church of Resone, and departed from there like a boy within a year, and now for six years and more wanders about through the vanities of the world. Hence, because the truth of this matter is not established to us, by apostolic writings directing* your fraternity, we command that *you diligently inquire into the matter itself and,* if you find that G. had not been offered by his parents, *nor had begun to be fourteen years old when he entered religion,* and, repenting within his fourteenth year of the vow made, departed from religion, *if he wishes to remain in the world,* you declare him absolved *by pontifical authority* from that vow of profession that he made, *and take care to publish his absolution both to the church of Resone and to the people of your city.* But if *perhaps* he was offered by his parents, or had completed his fourteenth year when he entered religion, or after his fourteenth year ratified the profession previously made by him, compel him *with all severity* to pass to the same or another religion.

Chapter XII

Latin source headnote: If a daughter younger than twelve years, delivered by her parents to a monastery, after becoming older is voluntarily veiled, she cannot return to the world.

Clement III.

Since *we know you to be a prudent and discreet man, if in matters in which you doubt you seek counsel from us with pastoral solicitude, and we respond to you concerning canon law as far as we can, and commend your prudence with worthy praises in the Lord. Indeed, you took care to propose to us by your intimation* whether she who *was* delivered to a monastery by her parents below the years of discretion, *and,* putting on the habit of religion, received the blessing, and afterward, leaving, joined herself to a certain knight, *by whom she also conceived offspring,* is to be compelled to return to the monastery, *since she asserts that after she had the*

age of consenting she dissented, and recalls that she received the gift of blessing unwillingly. Concerning this we answer your consultation in this manner: since, according to the censure of the Council of Toledo, either paternal devotion or one's own profession makes a monk, whichever of these is alleged will hold, with access to return to the world utterly interdicted. For she does not appear able to cast off from herself the yoke of monastic profession, since it is not clearly established that she contradicted it when she received the blessing, which *indeed* those who are veiled receive only at the age of discretion; especially if, ratification following, even if it were established that she once contradicted it, what had previously been done is strengthened. Nor does what is taken in a contrary sense from the constitution of our predecessor Pope Leo, *a holy man,* speak against this—that girls who received the habit of virginity when compelled by the command of their parents can abandon it without transgression—since it can rightly be understood of one who is known to have been constituted at marriageable age. For then, because she has free choice, she is not compelled to follow the will of her parents in the choice of her state.

Chapter XIII

Latin source headnote: A profession made without reception of the religious habit is valid.

The same.

A petition presented to us on your part contained that I., a canon of Acerenza, burdened by sickness, asserts that he emitted a vow that he would become a monk; whence, fearing that he might die with the vow unfulfilled, with joined hands he surrendered himself to you as a monk and brother. *Others also, in your absence, vowing themselves into the hands of priests to become monks, returned to their vomit when made healthy; and although they had formerly been familiars of your monastery, because they were not admitted to their ancient familiarity, they became adversaries in place of friends. Therefore, whether you can disregard the deeds of such persons lest they become worse, or whether they are to be compelled to fulfill what they promised, you seek to be taught by us. We therefore* answer your inquiry in this manner: since it is not the habit but regular profession that makes a monk, from the time a vow is emitted by one converting and received by the abbot, such a person is indeed *not undeservedly* to be compelled to become a monk and render to the Lord what he promised. [*Given at the Lateran, on the third day before the Ides of January.* 1199.]

Chapter XIV

Latin source headnote: If a father offered himself, with his goods and his prepubescent son, to a monastery, the son, having become older, can leave religion and seek his legitimate portion from the monastery.

Celestine III.

Since we are—*(And below:)* Indeed, it was *recently* reported to our ears that, when B., a knight, *had by the Lord's permission been sprinkled with the disease of leprosy,* he conferred himself, together with his son who had in no way reached the years of discretion, upon a certain monastery, together also with his goods *that he had held from the monastery itself,* and caused his said son to receive the monastic habit. *And when monastic discipline displeased the boy himself on account of the harshness of the rule, within the space of ten weeks he withdrew from the monastery and the habit thus received and began insistently to seek his father's goods from that abbey. And when a question concerning this had been brought to the diocesan bishop and debated before him for some time, because many appeared to disagree concerning the rigor of the canons—if the relatives of*

the said boy could prove by witnesses that he was below the years of discretion when he was offered, he was in no way bound by such a vow—the said abbot appealed to the hearing of the See of Mainz, and certain relatives of the same boy transferred the appeal to the Roman church, as we learned from the letters of Bishop Aug. Therefore, we answer your discretion in this manner: if the said boy has reached the years of discretion and is unwilling to retain the monastic habit, if he cannot be induced *to this,* he is in no way to be compelled, because it will then be free for him to lay it aside and to seek the paternal goods that come to him by succession.

Chapter XV

Latin source headnote: An insane person is not bound by making profession unless, having become of sound mind, he ratified it.

Innocent III, to the Bishop and Chapter of Targile.

As the tenor of *your letters disclosed to us, when the bearer of the present writing was constituted in the priestly office and labored under such want of temporal things that he could provide in no way for himself or his parents or brothers in their own necessities, he did not hesitate to expose himself to the labors of his own body and many perils of the sea, so that from his labor and honest acquisition he might relieve his own want and that of his family. But it happened after these things that, while he was staying far from your city, he began to labor under so grave a sickness that, placed outside himself, he despaired of the present life; and while he was constituted at such a point, he was clothed in the monastic habit by a certain simple monk and carried to a monastery. Then, after a few days had elapsed, when he was already at the beginning of his convalescence, he laid aside the habit and, with the license of the abbot of that place, left the monastery; and, wishing to aid the wants of his family, he humbly petitioned you that he might minister in the priestly office as before and dwell together with you. You humbly seek to be taught by the sacred oracle of the Apostolic See what is to be done by you concerning these things. We therefore* answer your consultation in this manner: although these two things appear mutually repugnant—namely, that someone is placed outside himself and despairs of the present life—nevertheless, if at the time when P., the priest and bearer of the present writing, is asserted to have been placed outside his mind, he was clothed in the monastic habit, since one who is alienated does not perceive and through this cannot consent, declare him absolved from observance of the monastic order, unless, after he became possessed of his mind, he made monastic profession by spontaneous will. [*Given at the Lateran.* 1198.]

Chapter XVI

Latin source headnote: Profession ought neither to be made nor received within the time of probation; but, if made and received, it holds. This it says, and it is a notable case and is alleged daily.

The same, to the Archbishop of Pisa.

To the Apostolic See, *which by the Lord's disposition is the mother and teacher of all the faithful, doubtful questions concerning diverse articles are referred, so that what shall have been answered by it concerning their solution may be held without doubt by all. Indeed, on your part we recently received such questions:* since the regular institute interdicts anyone from being made a monk before a probation of one year, *monks and nuns constituted in your diocese receive clerics as well as laypersons of each sex, the healthy and the infirm alike, who wish to assume the habit of religion, even professing by some nod, sometimes without any profession, sometimes causing them to make profession immediately. Hence many evils are known rather often to arise, since the infirm, already transferred to a monastery and having emitted profession, cast off the religious habit after they recover from*

their infirmities and return to their own property. It also happens that such persons remain in their own houses, since the monks do not wish their monasteries to be burdened by them while they live. The healthy also, thus received without probation, looking back, contract marriages after casting off the regular habit. Concerning them you petitioned to be made certain by the Apostolic See whether persons who assume the religious habit before the probation of one year or a competent time ought, when profession has been made or abandoned by them, to be reputed monks, and whether a married person desiring to be converted is to be received as a monk unless his wife promises perpetual continence. We therefore answer *in order* your questions in this manner: although the time of probation was granted by the holy Fathers not only in favor of the person converting but also of the monastery, so that both he may test its harshness and it may test his character—which on each side is diligently to be observed, especially when certain knowledge of each has not otherwise been obtained—nevertheless, if before the regularly prescribed time of probation one who desires to be converted receives the habit and emits profession, the abbot personally or through another receiving the monastic profession and granting the monastic habit, each is seen to renounce what is known to have been introduced for himself. And therefore he is *indeed* obligated by the profession emitted and received to regular observance and is truly to be deemed a monk, because many things are prohibited from being done that, if done, obtain the firmness of force. But abbots are to be prohibited from indiscriminately receiving anyone to profession before the time of probation; and if, contrary to the aforesaid form, they have indiscreetly received any persons, they are to be corrected by due retribution, since the space of probation was regularly instituted in aid of human frailty. *But when a husband, etc.* (*cf. c.* 13, *On the Conversion of Spouses, III.* 32.) [*Given at the Lateran, on the ninth day before the Kalends of December.* 1198.]

Chapter XVII

Latin source headnote: One who made profession, although he never remained in the cloister but remained in the world and used his own goods, is compelled to regular observance.

The same, to the Bishop of Acre.

As was proposed to us *on your part,* a certain cleric, when laboring under excessive sickness, as though certain of death and despairing of recovering health, sought and received the habit of regular canons, *expressing and promising in the reception of the habit those things that are customarily promised in a matter of this kind.* But he neither passed to the church, *as one burdened by sickness,* nor ceased to use his goods. *But afterward, health having been received, after fifteen years and more,* while *our venerable brother* the bishop and *our beloved son the prior and* canons of the church of Nazareth, from whom he had received the regular habit, saw and knew it, *you, although at the time when he received the habit in the church of Nazareth you exercised the solicitude of the prior, unmindful of the things that had been done concerning him, received him as a canon of Acre. But because you petition through our letters to be taught what you ought to do concerning this,* we answer your fraternity in this manner: if at his own request he received the regular habit and bound himself by his profession to observance of canonical religion, he is to be compelled by ecclesiastical severity to reassume the habit, since the fact that he remained outside the canonry for so long can deservedly be alleged not in his excuse but as an increase of greater transgression. [*Given at the Lateran, on the tenth day before the Kalends of January.* 1198.]

Chapter XVIII

Latin source headnote: A religious can, from zeal for a holier life, pass to a stricter religion after first seeking the license of his prelate, although it was not obtained, even if the first monastery is privileged that one cannot pass from it to another, even a stricter one. This it says, and it is a notable case and is alleged daily.

The same, to the Prior and Convent of Dimol.

Although it was granted by the Apostolic See to certain monks and canons, and also to Hospitallers and Templars, that, after someone has been professed with them, he cannot, against their will, pass to another place even with a view to a stricter religion, so that each person according to the Apostle remains in the calling in which he is known to have been called; nevertheless, because where the Spirit of God is, there is liberty, and those who are led by the Spirit of God are not under law, because law is not laid down for the just, this appears to have been granted to them for this reason: that no one from rashness or levity should fly over to another order, to the loss or injury of his own order, under pretext of greater religion, as it is established to have been frequently presumed by many; not indeed so that license to pass should be denied to him who has thought it should be sought with humility and purity, so that he may be able to migrate not feignedly but truly to the fruit of a better life.

Such a person, therefore, after he has sought from his prelate license to pass, absolved by the private law that prejudices the public law, can freely fulfill the purpose of a holier life, notwithstanding the insolent contradiction of an undiscerning prelate, because he deserves to lose a privilege who abuses the power granted to him; since even the Roman Pontiff, who obtains supreme power in the church, grants without difficulty to archbishops and bishops seeking for just cause license to resign. Wherefore let all those to whom a privilege of this kind was granted know that they are bound by law to grant license to pass to those seeking in this manner, because, just as a subject ought with humility and purity to seek from the prelate license to pass, lest he appear to contemn the good of obedience, so assuredly the prelate ought without difficulty or any depravity to grant the subject license to pass, lest he appear to impede a divinely inspired purpose. But if it is probably doubted whether someone wishes from charity or from rashness to pass to a stricter or a more lax order, the judgment of the superior is to be sought, lest perhaps an angel of Satan transform himself into an angel of light; this rule always being inviolably observed: that no [*bishop*] presume on any occasion to abandon his prelacy without the license of the Roman Pontiff, because, just as a greater good is preferred to a lesser good, so common utility is preferred to particular utility. And in this case teaching is rightly preferred to silence, solicitude to contemplation, and labor to rest. Indeed, to signify this, the only-begotten Son of God, Jesus Christ, was born according to the flesh not of Rachel but of Leah; nor is Mary read to have received him into her house, but Martha. Hence, when a bishop can both preside and profit, he ought neither to seek nor even to obtain license to resign.

Therefore, since *our beloved son* R., your monk, migrated to the brothers of the Cistercian order not that he might derogate in any way from your order but that he might lead a stricter life with them, *by apostolic writings directing* your discretion, we command that you in no way molest him concerning what he is known to have done from a pure heart, a good conscience, and unfeigned faith, because charity is a proper fountain in which an outsider does not share. [*Given at Rome at Saint Peter's, on the third day before the Kalends of May, in the ninth year.* 1206.]

Chapter XIX

Latin source headnote: Spouses can withdraw from one another by professing religion; it is otherwise if they forswear one another and do not remain continent, for the oath is illicit.

The same, to the Provost, Dean, and Scholasticus of Demeren in the Diocese of Cologne.

Coming to the Apostolic See, the woman G., *bearer of the present writing,* showed us by a suppliant intimation that, when she had contracted marriage in the face of the church with E. *de Hard., of the diocese of Cologne,* and had cohabited with him for a long time, discord arose between them to such an extent that each furnished a corporal oath that thereafter neither would seek the other; the man himself assigning as the cause of this separation that he had known carnally a certain aunt of that woman before he took her as wife. Although very many asserted this, *nevertheless* faith concerning it was not made to the church. But when afterward each flew to second vows, and the second husband entered the way of all flesh while the *former* husband was *still* surviving, the said woman caused herself to be enclosed in a strict place to do penance. *After six years had been passed there in devotion, hearing from certain discreet and religious persons that she could not be saved thus, she came to the Apostolic See, humbly and devoutly* petitioning that we deign to impart salutary counsel to her. We therefore, considering that that oath was illicit, *by apostolic writings* command your discretion that, after prior admonition, you compel the aforesaid man, after excluding her whom he took in addition, to receive the aforesaid woman; afterward to hear if there is any question, *and, appeal being removed, to decide it with a due conclusion.* But if nothing [*sufficient*] is shown against the marriage and the man, after abandoning the world, prefers to migrate to the regular life, you are to grant him license concerning this, so that she may *thus* be able to remain in her own purpose, *as she desires.* [*No letters, etc. Given on the second day before the Kalends of July.* 1205.]

Chapter XX

Latin source headnote: One who is converted to a monastery by taking the habit of a novice can return to the world within the time of probation unless it appears that he wished absolutely to change his life.

The same, to the Abbot of Affligem and Masters R. and G., Canons of Utrecht.

We have frequently been consulted by many as to whether one who entered a monastery by taking the habit of a novice, if before emitting profession he wishes to leave within the time of probation, can lawfully return to the world without the mark or fault of apostasy, especially with due correction of morals. Although diverse persons have held diverse views concerning this, we nevertheless believe a distinction must be made as to whether the person converting proposed absolutely to change his life so that under a regular habit he might thereafter serve almighty God, or conditionally to test regular observance so that, if it pleased him within a year, he would then profess the discipline of the order, or, if perhaps it did not please him, return with reformed morals to his former state. In the first case, in order to live regularly he ought to pass at least to a more lax rule. In the second, he can return to the world, yet not so as to live secularly. Therefore, so that his intention may be more fully known, let him declare his purpose at the beginning. *Therefore, after weighing this distinction with diligent meditation, inquire solicitously concerning our beloved son the Dean of Utrecht into what you see is to be inquired into, and canonically establish what you know is to be established,* [*causing, etc. Given at the Lateran, on the Ides of May.* 1204.]

Chapter XXI

Latin source headnote: One who, within the year of probation and without making profession, returns to the world can lawfully be promoted to orders and benefices.

The same.

You petitioned—*(And below:* [*cf. c.* 14, *On Jews, V.* 6.]) Thirdly, you asked whether those who, constituted in their younger years, received the habit of novices and afterward returned to the world within a year without making profession, and were promoted to sacred orders by their bishops [*who knew*] this, ought to be sustained in ministering in those churches in which they were instituted by the same bishops. We *therefore* answer your fraternity in this manner: on account of this they are not to be removed from those churches, but can freely minister in them, *unless perhaps prudence supplied age in them so that* [*at least*] *they ought to pass to a more lax rule, because by assuming the religious habit without a declaration they are presumed to have proposed to change their life.* [*Given at the Lateran, on the seventh day before the Ides of June, in the twentieth year of our pontificate.* 1212.]

Chapter XXII

Latin source headnote: One who wears the monastic habit for more than a year in a monastery where the habits are not distinct is deemed professed.

Honorius III, to the Bishop of Venice.

It was proposed *before us* on your part that there are certain persons *in the diocese of Venice* who, although they have worn the monastic habit for many years, have nevertheless not made monastic profession. Hence, when they are reproved by you or others because they have private property and otherwise live irregularly, they do not blush to say that they are not bound to the lack of private property, *to* continence, and to other regular observances, since the habit does not make a monk, but rather regular *profession. Wherefore you petitioned that apostolic remedy be furnished concerning these matters, since the disordered life of transgressors of this kind brings not only peril to them but also scandal to the minds of others.* And therefore we command your fraternity that, after prior *admonition,* you compel by ecclesiastical censure, *appeal being removed,* any persons subject to you by diocesan law who do not fear to enter the earth by two paths in the aforesaid manner, after they have worn the monastic habit for a year, also to profess and observe the rule according to the form of the order.

Chapter XXIII

Latin source headnote: Within the year of probation a person freely returns to the world unless he made profession tacitly or expressly, or it appears that he wished to change his life. This first. Secondly, it says that, so that novices may be distinguished from the professed, the habit of the professed ought to be blessed in places where the habit is not distinct.

Gregory IX.

We establish that novices placed on probation can freely return to their former state within a year before receiving the religious habit that is customarily given to those professing, or before profession has been emitted, unless it clearly appears that such persons wished absolutely to change their life and serve the Lord perpetually in religion, since anyone can renounce what is known to have been introduced for himself. We nevertheless establish, for the utter removal of all ambiguity, that, since in

certain places the religious habit of novices is not distinguished from the habit of the professed, at the time of profession the garments that are granted to those professing are to be blessed, so that the habit of novices may be distinguished from the habit of the professed.

Chapter XXIV

Latin source headnote: Fugitive religious are to be sought annually and compelled to return to the monastery.

The same.

Lest religious, having occasion to wander, incur detriment to their own salvation and their blood be required from the hands of the prelates, we establish that those presiding over chapters to be celebrated according to the statute of the general council, or fathers, abbots, or priors, solicitously seek their fugitives and those expelled from their order annually. If they can be received in their monasteries according to regular order, their abbots or priors, after prior admonition, are to be compelled through ecclesiastical censure to receive them, saving the discipline of the order. But if regular order does not permit this, let them provide by our authority that the necessities of life be ministered to such persons for doing penance there, at the same monasteries in suitable places if it can be done without grave scandal, otherwise in other religious houses of the same order. But if they find fugitives or expelled persons of this kind disobedient, let them excommunicate them and cause them to be publicly announced as excommunicated by the prelates of the churches until they humbly return to their mandate.

Title XXXII: On the Conversion of Spouses

Chapter I

Latin source headnote: If a husband makes profession with his wife's license, and the wife herself is suspect and neither vows continence nor enters religion, the bishop will restore the husband to the wife. This it says according to the letter.

Alexander III, to the Bishop of Uber.

Moreover, as to whether a married layman who, in the presence of priests and monks but without the knowledge of the bishop, entered a monastery with the license and permission of *his* wife *and perhaps* made profession, while his wife remained in secular habit and neither passed to religion nor vowed perpetual continence, can be recalled by his bishop to his wife's bed, or she is to be compelled to observe continence, we say that, unless the wife has passed to religion or promised to preserve chastity perpetually, the man can and ought to be recalled [*to her*] *by the bishop* from the monastery, *because, since they have been made one flesh, one part ought not to remain in the world and the other to pass to religion and chastity. Nevertheless, the wife is to be admonished and more earnestly exhorted to pass to religion and promise to preserve chastity.*

Chapter II

Latin source headnote: Before a marriage is consummated, either spouse can enter religion even against the will of the other; but the one remaining in the world can pass to second vows.

The same, to the Archbishop of Salerno.

But after [*that*] lawful consent in words of the present, it is lawful for either, even with the other resisting, to choose a monastery, just as *also* certain saints were called from nuptials, provided carnal commingling did not intervene between them; and it is lawful for the other remaining, if after being admonished that person is unwilling to preserve continence, to pass to second vows, because, since they had not been made one flesh together, one can sufficiently pass to God and the other remain in the world.

Chapter III

Latin source headnote: One who made profession against his wife's will and afterward is restored to her is not compelled, after the wife dies, to return to the monastery; nevertheless, he ought not contract marriage.

The same, to the Archbishop of Pisa.

A certain man entered a monastery against his wife's will and, when she sought him back, he was compelled to return to her. After she died, you ask whether he is compelled to return to the monastery or can take another as wife. We answer your consultation in this manner: the vow did not hold, whence he is not bound by reason of the vow to return to the monastery; but he will not be able to take a wife thereafter. For he promised not to exact the debt, which was in his power, and therefore as to this the vow held. But not to render it was not in his power but in the woman's. Hence the Apostle: "The husband does not have power over his own body, but the woman."

Chapter IV

Latin source headnote: A married man cannot enter religion unless his wife also enters, or unless she is not suspect and promises continence. This it says, and it is one of the principal chapters of the title.

The same, to the Bishop of Exeter.

Since you are endowed with knowledge of letters, you cannot *nor* ought to be ignorant that it is contrary to the constitution of the holy Fathers that a man, *while his wife remains in the world,* or a wife, while her husband does not assume the religious habit, ought to pass to religion, *because, since husband and wife are one flesh, as the Apostle teaches, one cannot be converted to God and the other remain in the world.* Hence it is that by apostolic authority we prohibit *you* from permitting a husband or wife in your bishopric to pass unless each has migrated to religion; *but, if they wish to be converted to God, let each pass to the fruit of a better life.* But if the wife is so old and sterile that she can be in the world without suspicion, you will be able to dissemble so that, while she remains in the world and promises chastity, her husband may pass to religion.

Chapter V

Latin source headnote: A married person is not to be ordained to sacred orders unless his wife promises continence.

The same, to the Archbishops of Esztergom and Cologne.

A married man *desiring to be converted to a monastery is prohibited from being received unless his wife* [*likewise*] *is converted. For while one body of the two has been made by the union of marriage, it is unfitting for one part to be converted and the other to remain in the world; nor will the conversion of that man be received before God if the prostitution of the conjugal covenant follows from it. Since, therefore, the assembly of clerics far excels the assembly of monks, such that sometimes a good monk scarcely makes a good cleric,* no married person is to be promoted to sacred orders unless he has been released by his wife professing continence, *so that thereafter a spiritual marriage may be made from carnal union.* [*Indeed, etc.; cf. the chapter immediately following.*]

Chapter VI

Latin source headnote: A married man cannot be promoted as bishop unless his wife professes religion.

The same, to the same.

Indeed, if married men have consented to be ordained, the *wife's* will must first be sought *also, so that, the chamber of their dwelling having been separated and religion promised, they may be ordained after they have been converted together. But if in any ecclesiastical grades it must be providently and knowingly attended to that nothing in the house of God be disordered and nothing out of proper order, much more must labor be expended that no error be made in the promotion of him who is placed over all grades. Hence it is that* by apostolic authority we prohibit your fraternity from presuming to ordain a married man as bishop unless his wife, having first professed continence, places the sacred veil upon herself and assumes religious clothing. *For we do not wish the promotion of the man to be able to become an occasion of perdition for the wife left in the world.*

Chapter VII

Latin source headnote: A spouse by present consent, not carnally known, who says that she wishes to enter religion, is compelled within a certain time to profess or adhere to her husband.

The same, to the Bishop of Brescia.

From the public instrument *that was presented to us, and from the tenor of your letters,* it became known to us that, when *the venerable brother* [*our O.*], the Bishop of Verona, *by our mandate* undertook the matrimonial cause disputed between the man A. and the woman M. to be terminated *by a canonical conclusion, after hearing the reasons and allegations of each party,* he approved the marriage between them by judicial sentence and commanded the same woman to return to *her* husband and exhibit conjugal affection to him. When she refused, *by our mandate, as we have learned,* she was bound by the bond of excommunication. But because *the aforesaid woman,* although she was espoused by the aforesaid man, nevertheless still, as she asserts, has not been known by him, *by apostolic writings directing* your fraternity, we command that, if the aforesaid man has not carnally known the *woman* herself and the same *woman, as is proposed to us on your part,* wishes to pass to religion, after receiving from her sufficient security that within the space of two months she ought either to pass to religion or return to her husband, you absolve her from the sentence by which she is bound, *contradiction and appeal ceasing,* in such a way that, if she passes to religion, each restores to the other what each is known to have received from the other, *and the man himself, when she assumes the religious habit, has license to pass to other vows.* Indeed, what the Lord says in the Gospel—that it is not lawful for a man to dismiss his wife except on account of fornication—is to be understood, according to the interpretation of sacred scripture, of those whose marriage is consummated by carnal union, without which *marriage* cannot

be consummated; *and therefore, if the aforesaid woman was not known by her husband, it is lawful* [*for her*] *to pass to religion.*

Chapter VIII

Latin source headnote: The summary is as above in this title, chapter "Since you are."

The same, to G., Prior, and the Brothers of Saint John.

But let no married man be received among you in any way without the license of *his own* wife. If she is [*of*] such unimpaired *reputation and* standing that her husband has no suspicion that she wishes to migrate to second vows or that she is likely to live with less continence, if she is such, *as aforesaid,* after her husband has been received into your fellowship, she, having publicly professed continence in the sight of the church, can remain in her own house with her children and household. But if she is such a person as is not free from suspicion, after celebrating the vow of continence, let her withdraw herself from association with secular persons and dwell perpetually in a religious place where she may serve God. Let none of you *dare* to tonsure any woman or presume to take *her* to dwell with him.

Chapter IX

Latin source headnote: A married man who makes profession with his wife consenting, although he never entered the monastery, if after the spouse dies he contracts with another, the marriage is not valid and he is compelled to enter the monastery.

Urban III, to the Prior of Holy Cross.

It came to our hearing on the part of *our beloved son,* the abbot of Saint Peter *of Romandine,* that, when D. *de Cel.,* placed in sickness, with *his* wife consenting, vowed a vow of chastity and received the monastic habit, afterward, *freed from the trouble of his sickness,* he both retained *his aforesaid* wife and, after she died, rashly joined another to himself. But because, although the aforesaid D. could not by law have proceeded to religion while his wife remained in the world, nevertheless, after she was removed from their midst, he could not violate the *vow made* without peril to his salvation, we command that, if what is asserted is true, you compel the aforesaid D. through excommunication to dismiss the woman and return to his monastery, thereafter to serve the Lord under a regular habit. *Given at Verona.*

Chapter X

Latin source headnote: One professed in religion with his wife knowing and dissembling cannot return to the world after she dies. This it says according to the truer and singular understanding in the matter.

Clement III.

G., priest *of Saint Columba,* consulted us as to whether a man, *a merchant, renouncing trade and his wife for the sake of God,* passing to religion and remaining in it for a year and more, his wife having been removed from the present life after he passed to the regular house, can resume the secular habit *that he cast aside* and take another as wife, or whether it is lawful for him to retain one taken. We answer a consultation of this kind in this manner: the aforesaid man can neither cast off the habit that he

assumed nor join any woman to himself in marriage. But if he has contracted, we decree that marriage to be dissolved.

Chapter XI

Latin source headnote: A spouse who vowed continence is bound to render the debt to the other spouse, although the latter consented to the vow for a time.

Celestine III.

Our dearest *son in Christ, R., illustrious King of the Swabians, humbly announced to our apostolate by letter and messenger that, when he was an adolescent and his beloved wife a young woman, binding themselves by mutual faith with a vow of contracting lawful marriage, they strengthened their mutual consent, with the will of their parents acceding, by the gift of earnest money. But afterward, when N., his father of renowned memory, was killed by enemies, and he was pressed on all sides through the adversity of wars and, after an encounter with his enemies, had been defeated and put to flight, because he feared that the betrothed woman herself might be violently seized by his enemies, and that another like her whom he could join to himself in marriage could not be found in the kingdom, by the counsel of his own parents and those of the same betrothed woman it was done that she received the monastic habit in a convent of nuns without the purpose of retaining it perpetually, and remained there for some years, lest she suffer any injury from the enemies. After peace had been restored and triumph obtained over his enemies, he solemnly took her as wife with great exultation and had sons by her; one of them, by the common consent and election of the princes of Swabia, he instituted his successor in the kingdom. But as time went on, the aforesaid wife, struck by grave sickness, when she believed she was about to depart from this life, induced by fear of death, vowed continence; and when the king himself did not wish to sadden her, he consented for a time. But now he proposes that he cannot remain continent and wishes to return to his wife's bed, which he judges can lawfully be done. And to restrain the detractions and reproaches of his rivals, he petitioned us that mandate be given to him that by our authority he treat his wife with marital affection, notwithstanding the vow of continence incautiously emitted by her and approved for a time by the same king.*

But because we could not elicit the truth fully concerning these matters, we have thought that knowledge of them and a canonical decision should be committed to your fraternity, commanding by apostolic writings that you inquire more diligently into the truth concerning these matters; and, if it is established to you that the aforesaid woman was first received among the nuns from fear of violence and seizure and declared that she had the purpose of marrying while she remained among them—especially since afterward she publicly married the king in the face of the church and, cohabiting up to these times, he had sons by her—you are to declare that she is not bound to the aforesaid monastery. For that deed cannot dissolve a marriage contracted, even if perhaps it could impede a marriage to be contracted. But concerning the other matter, we command your fraternity that, if you find that the wife of the King of the Swabians, weighed down by grave sickness, vowed continence and her husband furnished consent for a time, especially if the same husband did not *equally* vow perpetual continence, you cause her to cohabit with her husband and each to treat the other with marital affection.

Chapter XII

Latin source headnote: If one spouse, while the other is ignorant, professes religion and on account of this is led out of the monastery, after the other dies that spouse is not compelled to return to the monastery.

The same.

It pleases us, *and we commend your prudence because in doubtful causes you seek the counsel of the Apostolic See. For although you are endowed with knowledge of letters, you devoutly have recourse to your mother, the Roman church, so that, after receiving a fitting response concerning that of which you doubt, you may clearly recognize what form you ought to observe in similar matters. Through our beloved* [*moreover*] *son G., Dean of Catalonia, your solicitude* consulted our apostolate whether a woman who, believing her husband dead, assumed the religious habit and, when he returned, was led out of the monastery, is to be compelled after the death of the man to regular observance. Concerning this we answer *your discretion thus:* although her vow did not hold in every respect, nevertheless it was obligatory to the extent that she could obligate herself. For by entering the monastery she promised that she would not exact the carnal debt, which was in her power; but to return to the world was not in her power, but in the power of her husband. And therefore, as much as pertained to her, the vow held, which did not cease to hold after the death of her husband, since it is known to have reached the case from which it could have an efficacious beginning. Therefore we say it is more prudent and more fitting for her salvation, *imitating the footsteps of our predecessor Pope Alexander of happy memory,* that, *after abandoning the vanities of the world,* she return to the monastery where with good intention she made profession and received the religious habit. But if she cannot be induced to this, we believe she should not be compelled against her will.

Chapter XIII

Latin source headnote: The summary is as above in this title, chapter IV, "Since you are."

Innocent III, to the Archbishop of Pisa.

To the Apostolic See—*(And below:* [*cf. c.* 16, *On Regulars, III.* 31.]) But since husband and wife have been made one flesh through conjugal union, and one part cannot be converted to the Lord while the other remains in the world, assuredly neither spouse is to be received into regular observance unless the remaining one promises perpetual continence. But that person also ought to change his or her manner of life, unless perhaps of such an age as to be able to remain in the world without suspicion of incontinence. [*Given at the Lateran, on the ninth day before the Kalends of December.* 1198.]

Chapter XIV

Latin source headnote: Betrothal by present consent is dissolved through religious profession, but not through a purpose of preserving chastity in the world.

The same, to the Archbishop of Lyon.

It was intimated to *our ears* on your part that, when a certain woman *of your diocese* had assumed the veil of widowhood before two abbots, with a solemn blessing accompanied by celebration of mass and a litany, as was proper, *afterward* a certain nobleman proposed that he had previously espoused the woman herself through intermediaries by words of the present, earnest money *also* having been interposed. *Hearing that the woman herself had assumed the veil, he sent to her that carnal union should follow the espousal made. But you, after the matter was brought to your hearing, took care to prohibit them from commingling carnally before discussion of the business. Afterward, when the woman herself was constituted in your presence, you asked whether she had consented to him and why she sought to be separated from him.* But she, confessing that she had consented to him, said that she had heard that he was struck by leprosy and on account of this had abominated his embrace. *But when afterward fuller faith had been made to you through suitable witnesses that before reception of the veil mutual consent by words of the present had intervened*

between them, you thought the Apostolic See should be consulted as to whether reception of the veil impeded the marriage between them.

We answer your inquiry in this manner: although it can seem, not without consideration, that from the time a marriage between lawful persons is contracted by words of the present, while they live it can in no case be dissolved so that one may migrate to second vows while the other remains alive—even if one of the faithful between whom there is a ratified marriage became a heretic and was unwilling to remain with the other without insult to the Creator—unless perhaps it were done otherwise by divine revelation, which surpasses every law, as it is read to have been done by certain saints; nevertheless, we, unwilling *in this article suddenly* to depart from the footsteps of our predecessors, who, when consulted, answered that before a marriage has been consummated by carnal union it is lawful for either spouse, even without consulting the other, to pass to religion in such a way that the other can from then on lawfully be joined to another, counsel you to observe this same thing in the aforesaid article, although the cause by which the aforesaid woman was induced to receive the veil is false, since without any such cause she could have done this same thing with a view to religion. Moreover, although the aforesaid woman appears in receiving the veil to have assumed the religious habit, nevertheless, if she wishes to remain in her own house as though intending to preserve chastity in the world, the marriage already contracted is nonetheless to be consummated, unless she bound herself by vow to regular observance; in that case she can be compelled to leave the world and execute the religious purpose. [*Given on the second day before the Ides of January.* 1206.]

Chapter XV

Latin source headnote: A husband who has become a monk cannot be recalled by an adulterous wife.

The same, to the Bishop of Rudina.

H. *Vitalis, the bearer of the present letters,* constituted in our presence, showed us by his own confession that, *when he was* constituted in the order of acolyte, he took a certain girl named R. as wife in the face of the church. When he had known her carnally, a discord having arisen between him and the girl's friends, *after diligent discussion was held before you,* she was joined to a certain other man named V., and you ordained the aforesaid H. up to the grade of the priesthood *and granted him a church*. But when his conscience reproached him, he assumed the habit of the Cistercian order; *at length* [*N.*] *he revealed all the aforesaid things to his abbot, who diligently admonished him to provide in this matter for the salvation of his soul*. Therefore we command *your fraternity by apostolic writings* that, if the matter stands thus, you do not omit to compel the aforesaid woman, through ecclesiastical censure, *the obstacle of appeal having been removed*, to withdraw from the said V., to whom she is joined through adultery, and not to assail the aforesaid monk so as to prevent him from being able to fulfill his regular vow.

Chapter XVI

Latin source headnote: A wife cannot reclaim a husband who entered religion with her permission if, after his entry, she did not observe continence, although she was induced by fraud to consent or to give permission.

The same, to the Bishop of Poitiers and the Abbot of Boribarden in the diocese of Poitiers.

L., *our beloved son and the bearer of the present letters*, coming to our presence, *humbly* intimated to us that, when once he had conceived a purpose of entering a monastery, in the presence of several priests, *knights, and other men*, he pressed his wife *with entreaties* to impart her assent to him upon this matter, *having first entreated the same priests not to explain to the aforesaid woman that she too would have to abandon the world if she gave her husband permission to fly to a monastery. And when the woman in turn entreated him not to depart from her, he asserted that, unless he could obtain permission from her upon this matter, he would render himself useless not only to her but also to the whole world.* At length she, overcome by the entreaties and tears both of him and of the many standing by, placed his head beneath the altar with her own hand; and he, having been tonsured there in her presence, entered the monastery and, when the time of probation had ended, solemnly made monastic profession. She, however, remaining in the world, admitted dishonorable lovers; *wherefore the same L., fearing lest her incontinence be imputed to his continence, sought counsel from us as to whether he ought to persevere in the monastery*. Therefore we command *your discretion by apostolic writings* that, if it is thus, you freely permit the aforesaid L. to persevere *without disturbance from anyone* in the monastery that he entered. For although he appears to have offended not a little in this, that he craftily asserted that, unless the same woman consented to him, he would render himself useless both to her and to the whole world, and in that he entreated the priests not to explain to the aforesaid woman that she would have to leave the world if perhaps she gave her husband permission, nevertheless, since the same *woman* voluntarily placed her husband's head beneath the altar and afterward, *as is asserted*, did not observe continence, she is not to be heard in any way concerning his recall; since her claim, *if perhaps she were to reclaim him*, can be defeated by the exception of fornication committed, especially since, before she had fornicated, she did not consider that he ought to be reclaimed. [*Given at the Lateran, on the third day before the Nones of April, in the twelfth year.* 1209.]

Chapter XVII

Latin source headnote: A wife can reclaim a husband who has made profession, notwithstanding permission to make profession extorted from her by fear.

The same.

I., a woman coming to our presence, *lamentably* proposed *before us* that, when V., her husband *of the diocese of Ely*, had *lawfully* joined her to himself in marriage, *and, cohabiting with her for the space of nearly twenty years, had received offspring from her*, at length the same husband, wishing to assume the monastic habit, humbly sought from her that she favor his pious purpose. She, because of the many blows and other burdens *of molestations* that the said husband inflicted upon her, and because he asserted that he would dismiss her, assented to his wishes. And when the same husband had assumed the habit of religion in the house of Vaudey of the Cistercian order, the *woman herself* remained *there* in a house of nuns, having assumed no religious habit there or emitted any vow of conversion; and the same nuns ministered the necessities of life to her in return for the labor of her hands. But in the course of time, when the same husband, returning to the world, had cast aside the habit of religion, the same woman insistently sought to be taken back by him. He, utterly refusing to receive her, in addition to the blows with which he often afflicted her, inflicted upon her very many reproaches and grave injuries. Therefore we command your discretion *by apostolic writings* that, if the matter stands thus, *and the said woman is of such an age that doubt concerning a lapse of her flesh can deservedly be entertained*, you compel the said husband, after prior admonition, through ecclesiastical censure, appeal having been removed, to

receive her and to exhibit conjugal affection toward her. [*No letters, etc. Given at Rome, at Saint Peter's, on the fifth day before the Ides of April.* 1205.]

Chapter XVIII

Latin source headnote: The wife of a professed religious, who gave her husband permission to make profession, is not compelled to enter religion if she is continent and not suspect.

Innocent III, to the Bishop, Dean, and Treasurer of Lincoln.

A. woman signified to us that, when she had granted her husband F., *a knight*, before the dean of Saint Quiriacus *of Provins*, acting in this matter in the place *of P. of good memory*, Archbishop of Sens, permission to enter religion, nevertheless with a vow of continence enjoined upon her, and when assurance had been received from her that she would remain perpetually continent, the same dean, after profession had been made by the aforesaid husband in the monastery in which he had assumed the monastic habit, asserted that she ought to enter religion, although he had not at first expressed this to her and, if this had been expressed, *she* would not have given him permission; *and he caused her to be admonished concerning this several times through our venerable brother the Archbishop of Sens, on account of which she, with the consent of the said archbishop, implored our counsel upon this matter*. Therefore we command that, if it is thus, and she is of such an age concerning which suspicion cannot be entertained, you do not permit her, while observing the vow of continence, to be compelled against her will to enter a monastery.

Chapter XIX

Latin source headnote: An adulteress whom her husband is unwilling to reconcile is placed in some cloister to do penance.

Gregory IX.

We rejoice in the Lord. (*And below:*) But women who, having left the marital bed, have fallen through a lapse of the flesh—if their husbands, diligently admonished by you, are unwilling for God's sake to receive them after they have turned to the fruit of a better life—you shall take care to place in cloisters with religious women, so that they may do perpetual penance there.

Chapter XX

Latin source headnote: If spouses have released each other by promising continence, and both or one of them makes religious profession, one cannot reclaim the other.

The same, to I., a nun of the monastery of Plauda.

Some time ago, when the subject matter of a question was raised against you by C., a layman, who said that you were his wife, we appointed R., cardinal deacon of Saint Mary in Cosmedin, as auditor. Before him the said C., proposing by way of complaint that you unduly refused to adhere matrimonially to him, whose wife you were by consent in the present tense and the carnal union that followed, sought that you be restored to him. To this it was answered that he, for the remedy of his soul, by a pure and spontaneous will, in the presence of two religious priests and with five trustworthy witnesses adduced, had wholly renounced every right that he had in you, resigning it into the hands of one of the aforesaid priests, who took care to receive a resignation of this kind in

the person of the church; and that the same C. promised that he would preserve chastity and devoted himself to the service of the hospital of the poor at Ponte, promising by solemn vow all and each of the aforesaid things and granting you permission to pass to a monastery, while you in turn similarly promised and granted him permission and resigned every right—as all these things were said to have been proved by a public instrument drawn up by the hand of B., a notary of Arezzo.

But the aforementioned C. proposed that, after the aforesaid instrument had been lost by accident, it was fashioned by him in the first person, though it had formerly been in the third person, with many things inserted in the one otherwise than they had been in the other. And since he had been angry with you, as words and blows indicated, while the heat of his anger had not yet subsided, certain persons deceitfully enticed him, proposing to him that in the aforesaid hospital he could use foods according to his pleasure and retain private property, while the aforesaid B. promised him nonetheless that he would extinguish in him not only the burning but also the appetite of lust. On account of this, he asserted that whatever he is known to have done in this matter was done by him while angry, deceived and enticed alike, and under hope of the promise, and under this condition or manner: if he could observe continence.

But to these things it was answered to the contrary that it seems to make no difference whether a notary draws up an instrument in the third person or in the first, provided that the substance of the truth is not changed. Moreover, although at some time a hope had been given to the aforesaid C. by which he proposed that he had been induced to this, nevertheless, at the time when such things were done, he is known to have proceeded purely, simply, and voluntarily, solely for the love of God and the remedy of his soul, to the vow and the other aforesaid things. On account of this he ought to withdraw from the fellowship of secular persons and change his life, since he proposes that he is of such an age that he cannot remain in the world without suspicion of incontinence. We therefore, after taking counsel with our brothers, have held that you are to be absolved by sentence from the action of the said C., imposing perpetual silence upon him concerning this matter.

Chapter XXI

Latin source headnote: It is brief, but in other words it can be summarized thus: After a sentence of separation from the marital bed, rendered on account of the husband's spiritual fornication, the wife can freely enter religion.

The same.

A woman who remained in the faith can, against the will of her husband who returns from the infidelity on account of which she had been separated from him by the judgment of the church, freely fly to religion.

Title XXXIII: On the Conversion of Infidels

Chapter I

Latin source headnote: No one can have as wife the woman whose husband he killed through the machination of the woman herself; it is otherwise if he acted without machination. And it is a beautiful and everyday case.

Celestine III.

A laudable—(*And below:*) *But as for what* you asked concerning Saracens who, while they were in captivity, killed the husbands of certain Christian women through the plots and machinations of those women—whether, because they were afterward converted through the women themselves to the Christian faith, they can by law take them as wives, or, if they have taken them, whether *the* marriage of the same persons holds—we are here content with the rule of the Council of Tribur, which asserts that, if the women maliciously machinated the death of their *husbands*, although by their zeal the Saracens approached the *ecclesiastical* faith, nevertheless they ought neither to adhere to them nor, if they have even adhered, are they to be tolerated. *For a dispensation could not be admitted here without peril*, since the church is unwilling to compensate such a loss by such a gain.

In addition to this, certain Saracens *who* are noted to have killed Christians in war, and Christians likewise Saracens, but afterward the Saracens, converted *from the error of paganism* to the *catholic* faith, joined to themselves in marriage the wives of those whom they killed in the contest of war; and Christians are known to have done the same with Saracen women converted to the faith. *Nevertheless, those women*, after they learned the truth concerning the death of their former husbands, insistently demand judicial separation. In these matters, therefore, we answer that, since such persons did not procure the destruction of the deceased husbands, marriage can lawfully be contracted between persons of this kind, and those joined in this manner, *of whichever sex they may be*, cannot seek judicial separation *after the death of their spouses*.

Indeed, the same law will apply in the following case that you took care to propose. When S., a Christian man, denied Christ because of hatred for his wife, joined a pagan woman to himself, and begot sons by her, the Christian woman, abandoned in reproach of Jesus Christ, flew to second nuptials with the assent of her archdeacon and received sons from them. For it does not appear to us that, if the first husband returns to ecclesiastical unity, she ought to withdraw from the second and be restored to the first, especially since she is seen to have departed from him by the judgment of the church, and, as Gregory bears witness, insult to the Creator dissolves the law of marriage with respect to the one who is abandoned from hatred of the Christian faith. Moreover, whether the woman can, against the will of the first husband who has returned to the faith, return to the monastic life; or whether he, having returned, can, after the death of the first wife, have as wife the woman whom he joined to himself by the pagan rite and who on account of him was converted to our faith with her children; and whether the children begotten before conversion are to be held legitimate by virtue of the nuptials that after conversion were celebrated by the ecclesiastical rite; and similarly whether the children of her who, with the license of her archdeacon, married a catholic man while her first husband was alive but had become an infidel, are to be held legitimate—the rule as well as the teaching of the Apostle, by which it is said, "If the unbeliever departs, let him depart; for a brother or sister is not subject to servitude of this kind," and likewise that decree of the aforesaid Gregory, "It is not a sin if one dismissed on account of God has joined herself to another; for the unbeliever, in departing, sins both against God and against marriage," and, moreover, the fact that our predecessor Alexander III of good memory spoke thus, "So great is the force of marriage that those who were begotten beforehand are held legitimate after marriage has been contracted," do not permit us to doubt in matters of this kind that in these cases free access lies open to the one wishing to migrate to religion; that he who returns to the faith can lawfully join to himself the woman who was converted, after the first wife has died; and that the children also are to be deemed legitimate in each of the two aforesaid cases. Moreover, etc. [*cf. c.* 27, *On Witnesses, II.* 20.]

Chapter II

Latin source headnote: If one of two unbelieving spouses comes to the faith while the other remains in the error of unbelief, their common child is assigned to the convert.

Gregory IX, to the Bishop of Strasbourg.

We learned from your letters [*that a question of this kind had been brought to your synod*]: a certain man, brought from the error of Jewish blindness to Christ, the true light [*and the way of truth*], having left his wife in Judaism, insistently petitioned in court that their four-year-old son be assigned to him, to be brought to the catholic faith that he himself had received. To this she answered that, since the boy is still an infant, on account of which he needs maternal solace more than paternal, and is known to have been burdensome to her before birth, painful in birth, [*and*] laborious after birth, and since from this the lawful union of male and female is called marriage, as if "motherage," rather than "fatherage," the said boy ought more fittingly to remain with her [*than to pass to the father newly brought to the Christian faith, or at least to follow neither before he reaches lawful age. Many other things having been alleged on each side, you, meanwhile retaining the aforesaid boy in your power, wished to consult us as to what you should do in this case.*]

But since a son is constituted in the power of his father, whose family he follows, and not that of his mother; and at such an age one ought not remain with persons concerning whom there can be suspicion that they would plot against his salvation or life; and boys after their third year ought to be nourished and remain with a father who is not suspect; and the boy's mother, if it should happen that he remained with her, could [*easily*] lead him to the error of unbelief—we answer [*your fraternity*], especially in favor of the Christian faith, that the same boy is to be assigned to the father. [*Given at Perugia, on the seventeenth day before the Kalends of June, in the second year.* 1229.]

Title XXXIV: On a Vow and the Redemption of a Vow

Chapter I

Latin source headnote: Vows can be redeemed by alms or commuted into something else, with the authority of a superior intervening and a just cause for redeeming or changing them.

Alexander III, to the Bishop of Exeter.

Concerning vows of pilgrimage *also*, whether they can be redeemed by alms or commuted into something else on account of necessity, we answer *you* that it depends upon the judgment of the one who presides, so that he may consider more diligently *and attend to* the quality of the person and the cause of the commutation—namely, whether *this happens* from infirmity or an abundance of riches, whether the pilgrimage rests upon another probable cause, or whether a recompense would be better and more acceptable to God—and according to this he ought to dispense concerning it.

Chapter II

Latin source headnote: The Pope commutes a vow to go overseas, especially in the case of those who vowed at a boyish age.

The same, to the Bishop of Norwich.

We learned from the account of R., the *cleric* coming to us, that, *when he had been* constituted at a boyish age, he resolved to proceed to Jerusalem. He also gave his pledge to a certain *companion* of his, who had *likewise* proposed to visit the Lord's sepulchre, and received that man's pledge from him, that they would stand by one another on the way as faithful companions *and preserve good fellowship. He, indeed, turning the matter over with a solicitous mind, approached us so that we might disclose our counsel to him concerning it.* But we, *understanding that he labors under grave infirmity, as he asserts, and attending more diligently to the fact that his coming would confer little utility in the regions of the East, especially since it is not lawful for a cleric constituted within sacred orders to take up arms or devote himself to the shedding of blood,* absolve him from the vow that at a tender age he promised from facility rather than from the judgment of discretion, *and send him back absolved to his own place,* yet in such a way that he redeem the same vow with alms and, according to our counsel, throughout the whole time of his life ought to provide for one of Christ's poor, *both in food and in clothing,* provided his means suffice for this.

Chapter III

Latin source headnote: From the conception alone of a good to be carried out, no one is bound to execute the good conceived.

The same, to Master A. of Mandeforde.

We have *long since known your learning and prudence through the report of fame, and we wish and ought to consult your salvation the more attentively, the more, in consideration of your honorable conduct and life, we embrace your person with the arms of more fervent charity. It was reported to our ears on your part that,* when you had been terrified by excessive fear of death as a result of a certain bloodletting, you uttered these words *to yourself*: "I shall not remain here long," proposing in your mind that at some time you would assume the religious habit. *But on account of frequent infirmities, which very greatly impede the strictness of religious life, and because you exhibit hospitality to travelers and furnish many salutary things, you have not yet fulfilled in deed what you once conceived in mind, and through this you doubt whether you ought to be called to account in the strict examination for the broken faith of a vow.* Therefore, *although we do not believe that what the canons establish in matters of this kind is hidden from your prudence, in response to your consultation* we answer *briefly what we think, commanding by the signification of the present letters* that, if no further progress was made in the vow *than we have said above,* you cannot be judged a transgressor *even* if you do not fulfill what you said. *We admonish your prudence more attentively, however, and exhort you to do that which you know will conduce more to your salvation and, remaining mindful of your condition, to hold firmly in memory that Lot, when he feared the ascent of the mountain, sought and received the little city of Zoar.*

Chapter IV

Latin source headnote: Every vow can be changed into a vow of religion.

The same.

It is *declared by the testimony of sacred scripture that a spiritual man does not change his purpose when he meditates upon something more useful for the salvation of his soul. Hence it is that, inclining to your just petitions, we have granted you that, if anyone has proposed to visit the Lord's sepulchre or other shrines of the saints and, upon the occurrence of infirmity or another reasonable cause, wishes to assume the religious habit among you and serve God, you may be able freely to receive such persons.* One who is known to change temporal service into perpetual observance of religion is in no way held guilty of a broken vow.

Chapter V

Latin source headnote: Execution of a vow to go overseas can for cause be deferred by authority of the Pope.

Innocent III, to the Archbishop of Esztergom.

One is not to be called a transgressor of a vow who, by authority of the Apostolic See, *yet for a just cause*, deferred fulfilling what he vowed. Indeed, *our dearest son in Christ Henry, the illustrious* King of Hungary, signified to us that, since he has perceived that your counsel and aid have until now profited him amid the disturbance of the kingdom, it would derogate not a little from his utility if you were to proceed to Jerusalem, as you are bound by vow, while the kingdom remains unpacified. *Since, therefore, it is incumbent upon us to think solicitously about the honor of the king himself and the condition of the Kingdom of Hungary, by apostolic writings* we command your fraternity that you not begin the journey to Jerusalem before the kingdom itself has, *by the Lord's agency*, been restored to its former tranquility, or you have received a mandate concerning this from the Apostolic See. [*Given at the Lateran.* 1198.]

Chapter VI

Latin source headnote: The church compels a lay heir, through excommunication and deprivation of goods, to execute a vow to go overseas to which he obligated himself on behalf of the deceased.

The same, to Duke Andrew.

Although all have free choice in vowing, *and necessity has no place in vows, but will does*, nevertheless fulfillment after a vow is necessary to such a degree that no one may withdraw *from those things that he spontaneously and solemnly promised* without loss to his own salvation. Indeed, we learned that, when *B. of illustrious memory, formerly* King of Hungary, your father, acting in his last moments, entrusted to your fidelity, under threat of a paternal curse, the execution of the vow that he had vowed to the Lord —to visit the province of Jerusalem with a mighty hand *and outstretched arm*, yet with a humble *heart* and *humbled spirit*—you, *having understood the pious will of your parent*, assumed the sign of the cross and promised that you would fulfill it without any delay. *But, after your same father was removed from your midst, although you feigned that you were beginning the journey to Jerusalem, forgetful of the pilgrimage undertaken, you turned against your brother and the Kingdom of Hungary the battle line that you ought to have directed against the enemies of the cross, and, employing the counsel of evil men, committed many things against the royal serenity. But we, whom in these days the Lord, though undeserving, has called to the pontifical office, wishing to consult both the peace of the Kingdom of Hungary and your salvation, ask, admonish, and exhort your nobility in the Lord, and by apostolic writings directing* you, we command that, laying aside other concerns, no later than the next approaching feast of the Exaltation of the Holy Cross, discharging the debt of the cross you received, you begin the proposed journey and humbly pursue it, lest, if on any occasion you refuse the burden enjoined upon you by your father and spontaneously undertaken by you, you render yourself unworthy of the paternal succession and be deprived of the advantage of the inheritance whose burdens you refused to support; knowing that from then you will lie under the bond of anathema and are to be deprived of the right that, if the said king were to die without offspring, belonged to you in the Kingdom of Hungary by order of birth, and that the kingdom itself, appeal being set aside, is to devolve upon your younger brother. [*Given at the Lateran, on the fourth day before the Kalends of February.* 1198.]

Chapter VII

Latin source headnote: The Pope commutes a vow to go overseas into vigils, prayers, and fasts, especially when the cause that induced the vowing has ceased; in such a way also that the expenses to be incurred in going, remaining, and returning are sent in full for the aid of the Holy Land.

The same, to the Bishop of Troyes.

We believe it to be [*a judgment of great devotion and a proof of your sincere faith in Christ that, so that you might consecrate your last years to the Lord, neither the inconveniences of old age already approaching, nor the dangers of the way, nor the doubtful faith and constant inconstancy of the sea terrified you from resolving, for the salvation of your soul, the liberty of the church of Troyes, and devotion to the land of the Lord's nativity, to visit the province of Jerusalem.*]

For when the church of Troyes, *as we learned from your account*, was burdened contrary to ecclesiastical liberty by *undue* straits and oppressions, and you believed that the same church could not easily be aided through anyone other than *H., formerly* Count of Champagne, *then* constituted in the regions overseas, *trusting in the liberality of him who, if you approached him, you believed would humbly provide for you concerning the necessities of your church*, contrary to the counsel of your dear ones you proposed to approach him, and as a sign of pilgrimage and devotion to the eastern land you assumed the Lord's cross. [*Moreover, although, so that you might not appear empty in the sight of the Lord but carry with exultation some sheaves with you into the Lord's threshing floor, you delivered a sermon to the people so that some, having assumed the sign of the cross with you, would undergo the burden of the journey, scarcely one among all appeared who would receive and fulfill the word with you. But you, so that you might close your laudable purpose with a better end, began the way and, when you had reached Piacenza, received sad reports concerning the death of the same count. Nevertheless, concealing your fear on account of your household, you advanced into Tuscany and encountered certain familiars of yours who wished to recall you from the journey even against your will, asserting that your journey was expedient neither for you nor for the regions overseas, since, with all the French returning from there, that land had remained in the hands of the Germans to be defended.*]

Although, upon hearing of the death of the same *count, you conceived immeasurable sadness* and perceived that your *principal* intention was now frustrated, you were nevertheless unwilling to return to your own place without the counsel of the Apostolic See, *which by the Lord's disposition is the mother and teacher of all the faithful*. But, *afterward* entering the City *and constituted in our presence*, you humbly explained to us the purpose of your intention and the condition of the church of Troyes, *seeking with devotion our counsel and that of our brothers. Our venerable brother the Archbishop of Sens, your metropolitan, also intimated to us once and again through his letters the condition of the church of Troyes and the loss that it could incur from your absence. On account of this we resolved to deliberate with our brothers whether we should show mercy to the same church of Troyes by sending you back to exercise solicitude for it, or whether, as you were bound by vow, we should permit you to complete the journey begun, and which of these two would be more expedient both for your salvation and for the eastern land.*

And indeed we thought that three things principally ought to be attended to in this business: *what is lawful, what is fitting, and what is expedient*—what is lawful according to equity, what is fitting according to honor, and what is expedient according to utility. Indeed, it did not appear lawful for you to have come contrary to the vow *and so laudable a purpose*, since the prophetic voice cries: "Vow and render to the Lord your God," so that the first is referred to counsel and the second *to* command; *and in the*

Gospel: "Render to God the things that are God's." For it is not doubtful that this vow belongs to God, to whom you had obligated yourself by vowing. Nor did it appear fitting *in any way*, since it is written in the Gospel: "No one putting *his* hand to the plough and looking back is fit for the kingdom of God"; *and in Genesis the wife of Lot, who looked back, is read to have been turned into a statue of salt; and in the Acts of the Apostles Ananias and Sapphira, who went backward lying to the Holy Spirit, are written to have been successively carried dead from the sight of the prince of the Apostles.*

Moreover, it did not appear *in any way* expedient, since from your absolution, *if it were made*, scandal could be generated in the minds of laypersons, saying, "Where is the God of the clerics?" and believing by this example that they were not bound to observance of a vow *that they saw laid aside by the rulers of churches with the authority of the Apostolic See, through which it would happen that grave loss came to the eastern land.* For what is done by prelates is easily drawn into an example by subjects, according to what the Lord says to Moses in Leviticus: "If the priest who is anointed sins, he will cause the people to transgress."

But the failing and gray hair of a life growing old, which can scarcely tolerate their own labors and pains *even at rest*, alleged the contrary, as did the sighs of the church of Troyes, to which you are bound by the bond of pastoral solicitude and without whose assent you perhaps ought not to have emitted the vow of pilgrimage; *and the insistence of your said metropolitan, who solicitously invited us to have mercy upon the church of Troyes, induced us not a little toward the contrary part.* The vow itself also, which in its form was holy and honorable, appeared less lawful from the person of the one vowing, *because, although it has wings with which it strives to fly away, they are nevertheless so bound by the bonds of the one presiding that they do not have free flight without his permission.* For since, according to canonical institutes, a cleric ought not make pilgrimage without the license of his bishop, and a bishop is no less—indeed, rather more—bound to the Apostolic See, it could deservedly appear that without its general or special license you ought not to have emitted a vow of pilgrimage by which you would be absent for so long.

The vow itself also appeared less expedient for the eastern land, which in the necessity of the pressing crisis requires the aid of fighters more than the ministry of clerics, whom both office and lack of practice render unwarlike. For although that land vehemently needs your prayers and those of others, nevertheless, since the word of God who says, "The hour comes, and now is, when neither on this mountain nor in Jerusalem will you adore the Father," has now been fulfilled, and below, "God is spirit, and those who adore him must adore in spirit and truth," it could appear that by pious prayers before God you would profit no less in your church than in the eastern land in those things that you would justly and humbly petition for its liberation. And would that you could ascend the mountain with Moses, so that, while you prayed with hands extended, Joshua, fighting in the wilderness, might overcome the Amalekites by the edge of the sword. It was also believed that it would profit the eastern land more if what you would have spent on procurations for yourself and your clerics were transferred, according to the judgment of some religious man, to the aid of the fighters.

Since, therefore, in the old law, in which the precept of the Lord bound no less than a vow binds today in the church, of the firstborn that were commanded to be offered to the Lord some were rendered to the Lord, as the firstborn of the Levites; some were redeemed, as those of the other tribes; and some were commuted into another thing, as the firstborn of an ass, which was commuted for a sheep—attending from this to the fact that a vow can *also* be commuted into another work of piety, *especially since our predecessor Pope Alexander of good memory, when asked, answered that a vow of*

pilgrimage can also be redeemed or commuted into another thing, not caring that the mouth of those speaking iniquities should speak, provided that we do not withdraw from the path of truth, *since according to the Apostle our glory is the testimony of our conscience, and not caring for scandal, especially because we proceed not in darkness but in light*, secure in the authority of him who, when he heard from the disciples, "*Do you not* know that the Pharisees, having heard this word, were scandalized?" answered, "Let them alone; they are blind and leaders of the blind"; *and according to the Apostle, "If I pleased men, I would not be the servant of Christ"*—we grant you, for yourself and *six* of your servants, *by the common counsel of our brothers and of the archbishops, bishops, and other prudent men whom by the mercy of God we had many present with us*, license to commute the vow of pilgrimage in such a way that you entrust to some religious man *all* the expenses that you would have incurred in going, remaining, and returning, to be transferred without any diminution to the necessary uses of that land. *For thus you will profit the eastern province, which in the crisis of pressing necessity needs your goods more than you, by your assistance, and we provide more usefully for the church of Troyes by your presence and governance, and through this your soul will be consulted more salutarily.*

You shall also recompense labor with labors, insisting more solicitously upon vigils, devoting yourself more devoutly to prayers, and exercising yourself more strongly in fasts, *and watching over your flock with pastoral solicitude*. Moreover, this specially induced us to make this indulgence for you *from the benignity of the Apostolic See*: that *your journey now did not appear fruitful to the province overseas, from which almost all the French had returned; and*, since you had principally emitted the vow of pilgrimage for *the salvation of your soul and* the liberty of the church of Troyes to be obtained through the said count, after he was removed from your midst, because the causes ceased, the effect could also cease more easily. [*Therefore let no one, etc. Given at the Lateran, on the Ides of March.* 1198.]

Chapter VIII

Latin source headnote: To one temporarily impeded from executing a vow to go overseas a delay is granted; but upon one perpetually impeded a redemption is enjoined in that which is more expedient for the Holy Land.

The same, to the Archbishop of Canterbury.

Because you *resolved to consult the Apostolic See concerning those matters whose execution pertains to the pastoral office, we commend your fraternity in the Lord, hoping that, instructed through our response, you will execute them more diligently.* You asked *indeed* what is to be done by you concerning those who, having assumed the sign of the cross for the succor of the Holy Land, cannot usefully fulfill the vow *of pilgrimage* on account of infirmity, poverty, or another just cause, since *through apostolic writings* you received a mandate without distinction to compel, *through ecclesiastical censure with appeal removed*, those who cast aside the sign of the cross they had assumed to resume it and execute the vow, *notwithstanding any indulgence, if perhaps one had been obtained by surreption from our predecessor*.

We answer your inquiry in this manner: the weak and the poor approach that place more to its deficiency than to its advantage, since the former cannot fight and the latter are compelled to beg, unless perhaps they are nobles and magnates who bring fighters with them at their own expense, or craftsmen and farmers who can acquire necessities for themselves by their labors and minister aid to the land—although not many such persons are useful there on account of the smallness of the possessions and the fewness of the inhabitants. Hence we believe a distinction must be made between those who are believed to have a temporary cause of impediment and those who have a

perpetual one: delay is to be granted to the former, but redemption is to be enjoined upon the latter; and, after the extent of their resources has been weighed, let them transmit for the aid of the Holy Land the expenses that they can make or would have made, the labor of the persons also having been compensated, executing through others what they cannot fulfill through themselves.

Again, between those who emit a vow of pilgrimage for the defense of the Holy Land and those upon whom a journey of pilgrimage is enjoined in satisfaction for their crimes, we believe a distinction must be made: concerning the former, the succor of the Holy Land, and concerning the latter, the labor of the journey, ought to be attended to more according to the intention of the one vowing or doing penance. Hence, if one vowing in this manner is useless for fighting, although fit for going, it is better to redeem the vow than to consume the expenses. This can properly be understood also of a penitent who on account of weakness cannot fulfill the journey of pilgrimage enjoined; but not of one who, although powerless to fight, is nevertheless able to go. *Moreover, diligent discretion is to be applied concerning these matters, lest anything through entreaty or payment, love or hatred, or any occasion whatever be attempted in any way against the salvation of the soul or the utility of the land. Hence we wish that a dispensation of this kind be provided through religious and provident men.*

Concerning women, moreover, we believe this is to be observed: that those who are unwilling to remain should follow their husbands *as they go*; but the others, unless perhaps they are rich women who can take fighters with them at their own expense, should redeem the vow that they vowed, *the others having each been diligently induced according to their own means to aid the Holy Land.*

Chapter IX

Latin source headnote: A vow to go overseas can in certain cases be redeemed and commuted, yet not by anyone other than the Pope or one acting with his special mandate. This it says as far as § "Secondly, you asked." — (*Secondly, etc.:*) Those fit for going but unfit for fighting, if they are vigorous in counsel or can take fighting knights with them, do not redeem a vow to go overseas. This it says, the Sicilian Abbot. — (*But as for, etc.:*) Wives can follow their husbands overseas if they wish, but they are not bound unless they themselves also vowed. This it says, the Abbot. — (*In so great, etc.:*) Husbands can emit a vow to go overseas without the consent of their wives. This it says, the Sicilian Abbot. — (*Concerning clerics, etc.:*) Clerics, as being unfit to fight, redeem a vow to go overseas except in certain cases. This it says, the Sicilian Abbot.

The same, to the same.

We believe that it *proceeds from the great providence of your solicitude that, although we have answered what we think to your many and frequent consultations, you elicit new questions from our response.* Indeed, from the consultation that we formerly issued in answer to your inquiry concerning the business of those signed with the cross, you found a way to other questions and solicitously asked whether what is said in it establishes a general law, so that it is lawful indiscriminately for any prelates to absolve according to the expressed form those who are committed to their jurisdiction. Therefore we answer *your inquiry briefly* that in our consultation a *common* law is issued, and, although it in no way explains to what sort of persons, *and* specifically to whom, its execution pertains, nevertheless execution of this law is incumbent only upon those who have received from the Apostolic See our special mandate concerning it.

Thus, therefore, answer is made to the inquiry by which your fraternity consequently asked of which religious this was to be understood, *which was contained around the middle of our consultation in these words: "We wish a dispensation of this kind to be provided through religious and provident men"*—namely, whether there only those who have assumed the religious habit are called religious, many of whom are unlearned and ignorant of law, *although in your consultation it is said, "through religious and provident men"*, or bishops, who, just as they excel in dignity, so ought to excel others in religion. For execution of that law pertains to neither unless it is specially delegated to them by the Apostolic See.

Secondly, you asked whether what is said—"If any of those vowing is useless for fighting, although fit for going, it is better that he redeem the vow than consume the expenses"—ought to be taken generally, so as to include *also* nobles and magnates who are vigorous in counsel and can bring many fighters with them, or whether a *general* expression of this kind comprehends only lesser persons. But, if you extend the eye of your consideration *for a little while* to what precedes, you will find that question solved in the course of our consultation, where it is said that the weak and the poor approach more to the deficiency of the Holy Land than to its advantage, *since the former cannot fight and the latter must beg, unless perhaps they are nobles and magnates who bring fighters with them at their own expense; and the other things that follow. For those who are called weak here are below called useless for fighting. Hence an equal exception ought to be understood in each place*, although it can be answered otherwise that those who, even if they cannot fight through themselves, can nevertheless assist those fighting by maturity of counsel and relieve their personal deficiency through others, are not useless for fighting.

In the third place also your fraternity asked how what is subjoined concerning women ought to be understood: that those who are unwilling to remain should follow their husbands as they go; but the others, unless they are rich women who can take fighters with them at their own expense, should redeem the vow that they vowed. For what is said in the final place appears to have been said only of those vowing. But what is placed above—"women who are unwilling to remain, etc."—appears to be understood of those who bound themselves to the purpose of pilgrimage by no bond of a vow, *which was not doubtful to be so. From the same expression you also say that it appears to certain persons that husbands are permitted in this article to be able to vow without the assent of their wives and to accomplish what they vowed. To this we say that*, in so great a necessity of the Christian people, lest aid to the Holy Land be *utterly impeded or deferred longer*, husbands, without the assent of their wives, *so that they may fight for the King of kings*, can freely vow the purpose of this pilgrimage and freely fulfill what they vowed. But the wives are to be admonished more attentively to consent.

Concerning clerics, moreover, we thought that *your inquiry* should be answered in this manner: since the office of the clergy renders them unfit for fighting, unless they are either vigorous in counsel or instructed in the office of preaching, or deputed to the service of magnates, or rich and powerful to such a degree that they can take some fighters with them at their own expense, it is more expedient to receive redemption from them than to compel them to pursue the vow, if necessity requires or utility persuades. We say these things, however, of those vowing, not of those upon whom the labor of pilgrimage was enjoined as penance.

Chapter X

Latin source headnote: One who vowed to enter religion, if, with the vow complete, he becomes a bishop, ought to resign and fulfill the vow. Thus it is commonly summarized.

The same.

Through your letters you intimated to us that you had solemnly emitted a vow of receiving the regular habit in the church of Grenoble, and afterward promised in the hands of the prelate of the same church that within two months after you had returned from the Apostolic See, *to which you were then approaching*, you would fulfill the vow that you had emitted. And when, after the term itself had passed, you took no care to fulfill what you had vowed, at length, existing as a transgressor of the vow, you were called to the governance of the church of Geneva, *concerning which you petition us to provide for your salvation*. We therefore, *answering briefly*, counsel your discretion that, if you desire *wholly* to heal your conscience, you resign the governance of the aforesaid church and render your vows to the Most High, *showing you grace in this*: that, if the chapter of the same church of Geneva should afterward think that you ought canonically to be elected, you will be able to receive the election *thus* made of you. [*Given at Segni, on the sixth day before the Ides of August, in the sixteenth year of our pontificate.* 1213.]

Chapter XI

Latin source headnote: A prelate, even one professed, can emit a vow to go overseas and convert the twentieth of the revenues of the church to his own uses.

Honorius III, to the Provosts of Haresben and Bengad.

You ask us whether it is lawful for you, professed in a regular order, one of whom is signed with the cross and the other desires to be marked with the character of the cross, to carry with you the twentieth of the revenues of your churches deputed to the succor of the Holy Land, *so that through you it may advance the succor of that land, since you are prepared to expose your persons to the service of Jesus Christ; especially since many, provoked by an example of laudable emulation, are manfully girded to run after you, intending to fight the battle of the Lord against the nations. But because we aspire with all our strength to the liberation of that land*, we answer your discretion in this manner: if your churches are not *otherwise* injured enormously through your absence, and you will be useful to the Holy Land alike by word and example—which we have thought ought to be left to your consciences—after suitable procurators have been left in your churches, you can and are bound to fulfill the vow of pilgrimage, and thus the twentieth of your churches deputed to the aid of the Holy Land can pass to your uses.

Title XXXV: On the Status of Monks and Regular Canons

Chapter I

Latin source headnote: A diocesan ought not molest monasteries except for the purpose of correction, nor claim for himself things offered to them.

Gregory, to the Archbishop of Naples.

Theodosius [*abbot of the monastery of Saint Martin suggested to us by a petitionary intimation the matters contained below: that in the house once belonging to Martin, by his will, his predecessor Andrew, abbot of the monastery, constructed a monastery in which monks ought to dwell. And because he petitions that it be dedicated in honor of blessed Peter, prince of the Apostles, and Saint Michael the Archangel, we have thought your charity should be exhorted by the present writing that, when he petitions, you approach the aforesaid place without reluctance and*

furnish the venerable solemnities of dedication. And as often as it shall be necessary, let the venerable sacrifices of masses be celebrated by the priests of your church serving in the holy place, in such a way that] neither you nor your priests inflict any molestation upon any monastery beyond the diligence of discipline, or think that you may claim for yourselves anything that has come there [*as an advantage*] from the devotion of diverse persons, since whatever happens to be offered in this manner by the faithful ought to profit the monks serving there.

Chapter II

Latin source headnote: Monks ought not be placed singly throughout parishes. This first. If anything is given for becoming a monk, the one received is prohibited from sacred orders, and the one receiving is suspended from office. This second. A monk having private property without the license of the abbot is removed from communion of the altar and, dying thus, is deprived of burial and the communion of the brothers. This third. If money is conferred for having some office in a monastery, the giver and receiver are deposed. This fourth. In conventual priories those instituted by election are not to be removed without reasonable cause, and it gives three examples of reasonable cause. This it says, comprehending the substance.

From the Lateran Council.

Let monks not be received in a monastery for a price, nor be permitted to have private property, nor be placed singly throughout villages and towns *or* throughout any parochial churches whatever; but let them remain in a larger convent or with some brothers, and not await alone among secular persons the conflict of spiritual enemies, Solomon saying: "Woe to one alone! For when he falls, there is no one to raise him." But if anyone, having been exacted from, gave something for his reception, let him not ascend to sacred orders; and let the one who received him be punished by suspension from his office. Moreover, one who has private property, unless it was permitted to him by the abbot for an administration enjoined upon him, is to be removed from communion of the altar; and one who at his last moments is found with private property and did not worthily repent, let no offering be made for him, nor let him receive burial among the brothers—which we command to be observed also concerning all religious. Moreover, let the abbot who does not diligently guard against these things know that he will incur the loss of his office.

Likewise, let priories or obediences be entrusted to no one by the gift of a price; otherwise [*both*] givers and receivers are to become strangers to ecclesiastical ministry. But priors, when they have been canonically instituted in conventual churches by election of their chapters, are not to be changed except for a manifest and reasonable cause: namely, if they have been dissipators, if they have lived incontinently, or if they have done something of such a kind on account of which they deservedly appear to be removed, or if also they are to be transferred for the necessity of a greater office by the counsel of the brothers.

Chapter III

Latin source headnote: He admonishes the Cistercians to observe the rule according to its original institution. This it says first. And a religious house aggregated to the Cistercians is bound to observe their customs. This it says second.

Alexander III, to the Abbots and Convents of the Cistercian Order.

Recalling how this holy plantation, *this fruitful vine, and finally this vineyard of the Lord of Hosts budded under the first fathers of the order and, producing branches far and wide, brought forth flowers and poured out fragrances to drive away deadly poisons on every side, with most vigilant custody take care to adhere in all things to the footsteps of those through whom, with the Lord cooperating, a flower of honor of this kind was planted in the wilderness of this world. For these men, most content with monastic frugality, placing the best beginning in poverty, attained the complement of all sufficiency, dear to the church, acceptable to bishops and prelates, and glorious in reputation and merit in the sight of kings and princes. But now, what* we say with sorrow is that, although not by all nor in all things, nevertheless by very many and in many things there is said to have been a departure from that holy institution to such a degree that some of you, *utterly forgetful or ignorant* of the first institution, contrary to the rule of your order possess villages, *mills*, churches, and altars; benignly receive fealties and homages; hold jurisdictions and tributaries; *and apply every effort so that their boundaries may be enlarged on earth, although their conversation ought to be in heaven. Hence the order is utterly injured and corrupted, and it is not a change of the right hand of the Most High; indeed, rather, those pass from the right hand to the left who, after they decreed to serve God under the habit of poverty when they abandoned the world, are again entangled in secular affairs. From this, contentions and litigations are stirred up against you by those who are outside; and, while the abbots are occupied in forensic causes, torpor of the order and dissolution of charity arise exceedingly in the houses committed to them—especially because charity advances more in poverty and, disdainful of fellowship with cupidity, unless the latter is restrained, the former grows cold.*

And therefore, with the entreaties and admonitions *that we can*, we exhort *your holy and venerable college* that those houses that were founded in that order from their first origin be content with boundaries established *and ordained, and not wish inordinately to extend their hands toward those things that they will not be able to retain without many labors and dangers and thereafter without crimes and great confusion.* For if, after abandoning the original institutes of the order, you wish to turn aside toward the common laws of other monasteries, *you also* will have to be judged by common law, because it is fitting that those *who* assume a life similar to others should experience a similar discipline under the laws.

But let those houses that have transferred themselves from other institutes to your order strive wholly to conform themselves to your usages; and, after abandoning or even exchanging possessions that your institute does not receive, let them so adapt themselves in all things to your religion that, just as they rejoice that they themselves have been assumed into fellowship of the order and identity of habit *and regular observance*, so also in the poverty of secular things they may rejoice that they have been conformed to your institutes, *so that from this they ought to become both more lovable to the heavenly Creator and deservedly dearer to us and the universal church. Indeed, if the authority of the Apostolic See has dispensed concerning these possessions in the case of any one of your monasteries, no example is to be taken from this by any of you, because it is rash and unworthy for anyone to presume by his own authority for himself what, after attending to a certain reason, the Roman church wished to grant to some monastery by singular benefits.*

Chapter IV

Latin source headnote: A regular canon who did not resign his private property at death ought not be buried in the cemetery; and if he was in fact buried, he ought to be exhumed from it if this can be done without scandal.

Clement III.

Concerning a certain regular canon who, acting at the point of death, although admonished by his prior, was unwilling to resign the private property that he had secretly held contrary to the rule, and thus closed his last day and was given burial among the other brothers, *you thought it necessary that we be consulted. But because we do not believe that you are ignorant of what is held established concerning such persons in the Rule of blessed Augustine, and that it is manifestly established that this same thing was prohibited at the Lateran synod*, we answer your inquiry in this manner: that canon was not only to be deprived of Christian burial, but even, if it could be done without the greatest scandal, is worthy to be cast out of the church itself *and buried outside the church's cemetery, since, as is expressed in the same synod, neither is an offering to be made for him nor ought he to have burial among the brothers.* Moreover, when perhaps this happens, it is to be done in similar cases.

Chapter V

Latin source headnote: A regular canon can be placed over a parochial church, even a secular one; but he ought to have with him a companion of his order, if it can conveniently be done.

Innocent III, to V., Pleban of Saint Gavinius.

That you hold the fear of God before your eyes is evidently gathered from your fruits, since the works that you do bear witness to the truth. *Hence we commend your purpose in the Lord.* Indeed, *as it sounded in our ears long ago*, once, desiring to pass to the fruit of a better life, after resigning the office of pleban, you made a promise concerning your conversion before the brothers of Saint Victor of Bologna, neither emitting solemn profession nor assuming the religious habit. But *the nobleman Count Albert and* the parishioners of the same parish, attending to the fact that you had presided laudably *and that no small loss threatened the same place from your departure, have until now delayed your desire; and they obtained from our venerable brother* the Bishop of Florence that you minister there. *Our beloved son* P., cardinal priest *of the basilica of the Twelve Apostles*, then legate of the Apostolic See, *after weighing the utility of the parish*, is also said to have assented to this, which the aforesaid *count and* parishioners humbly petitioned us to hold ratified, especially since you are known until now to have done it with the license of the prior of Saint Victor *of Bologna*.

Although it is provided concerning monks at the Lateran Council that they are not to be placed singly throughout villages and towns *or* throughout any parochial churches, *but are to remain in a larger convent or with some brothers, lest they await alone among secular persons the conflict of spiritual enemies, Solomon saying: "Woe to one alone! For if he falls, there is no one to raise him"*; nevertheless, because this is not specially provided concerning regular canons, who, although they are not thought separated from the fellowship of holy monks, nevertheless serve a more lax rule, and because according to the ancient canons even monks can be ordained priests for the governance of parochial churches, from which they ought to exercise the office of preaching, which is privileged, we have thought that assent should be given to the petitions in this manner: that, while exercising the office of pleban, if it can conveniently be done, you have one regular canon with you for security, so that in those things that belong to God and regular observance you may enjoy both his fellowship and his solace.

Chapter VI

Latin source headnote: First it treats of the clothing of monks. Secondly, of the renunciation of property. Thirdly, of silence. Fourthly, of foods. Fifthly, of offices in general and in particular.

The same, to the Abbot and Convent of Subiaco.

When we had come to the monastery of Subiaco *in person:* (*And below:*) We firmly prohibited any of the monks from henceforth using linen shirts. *Moreover, to supply the defect of hospitality, he granted the multure of one mill, intending for the time being to grant greater things, yet in such a way that alms be conferred from the cellarer's office to relieve the necessity of the poor. But we recalled to the use of the sick the aforesaid churches that had been assigned as benefices to secular clerics, decreeing void the grant of the hospital that had been made to the Bishop of Anagni, and establishing that they should not thereafter be granted to anyone as a benefice; but let the infirmarian dispose of those churches as he knows will be more expedient for the necessities of the sick.*

We also strictly prohibit, by virtue of obedience under attestation of divine judgment, that any monk *henceforth* possess private property in any way; but, if anyone has any private property, let him resign it all immediately. But if after this he is detected to have any property, after prior regular admonition let him be expelled from the monastery and not received thereafter unless he repents according to monastic discipline. But if property is found with anyone at death, let it be buried beneath the ground with him outside the monastery in a dunghill as a sign of perdition, according to what blessed Gregory narrates in the *Dialogues* that he did. *Nevertheless, let the abbot and prior inquire frequently and investigate diligently, lest any of the brothers be able to have private property.* Hence, if anything has been specially destined for anyone, let him not presume to receive it, but let it be assigned to the abbot, prior, or cellarer.

Moreover, in the oratory, refectory, and dormitory let continual silence always be observed, and in the cloister also at certain hours and places, according to the ancient custom of the monastery laudably observed, *but henceforth to be observed more laudably*. In the refectory, moreover, let no one eat flesh at all. Nor on certain solemnities, as was once customary to be done, let the convent go out with the abbot, a few being left there, to eat flesh outside the refectory, since *on* those days especially regular discipline is to be observed more studiously. Nor let them believe that eating flesh is lawful for them outside the refectory, except *only* in the infirmary, although by indulgence the abbot can sometimes call some of the brothers—now these, now those, as necessity demands—and furnish them better and more fully with food with him in his chamber.

Furthermore, let the weak and sick who need bloodletting or some medicine receive competently, not separately in chambers but all in the infirmary, whatever is necessary for them, both in flesh and in other things. But if any of them is so weak or even delicate that he cannot be content with the common foods, let provision be made for him without scandal to the others in such a way that, if the abbot or prior wishes to show him special mercy in the refectory, he cause some suitable food to be brought not before that man but before himself, from which he himself may make him a pittance for the sustenance of nature.

Let those who will be faithful and discreet be deputed to perform the offices of the monastery. Nor let any obedience be committed to anyone to be possessed perpetually, as though it were leased to him for his life; but, when he ought to be removed, let him be recalled without any contradiction. Moreover, above the others after the abbot, let the prior be powerful in work and speech, so that by the example of his life and the word of doctrine he may both instruct his brothers in good and recall them from evil; having zeal for religion according to conscience, so that he may reprove and chastise offenders, but *cherish* and strengthen the obedient. Moreover, let the abbot, whom all are reverently to obey in all things, be with the brothers in convent as frequently as he can, bearing vigilant care and

diligent solicitude concerning all things, so that he may be able to render to God a worthy account of the office committed to him. But if he is a transgressor or contemner of the order, or negligent or remiss, let him know for certain that he is not only to be deposed from office but also to be chastised in another manner according to the rule [*gravely*], since not only his own offense but also another's will be required from his hands. Nor let the abbot think that he can dispense with any monk concerning the possession of property, because renunciation of property, just like the guarding of chastity, is annexed to the monastic rule to such a degree that not even the Supreme Pontiff can grant license contrary to it.

Chapter VII

Latin source headnote: First, it establishes that provincial councils of regulars are to be celebrated every three years. Secondly, it moderates the number of mounts and persons coming. Thirdly, it disposes concerning the instructors and those presiding over the chapter. Fourthly, concerning the time for which the chapter is to last and what will be done there. Fifthly, that what is done there be observed. Sixthly, concerning the following chapter. Seventhly, concerning leading a common life. Eighthly, concerning the visitors to be elected and their office. Ninthly, it extends this to regular canons. Tenthly, it provides concerning a disagreement among the visitors. Eleventhly, it exhorts diocesans to the reformation of monasteries. Twelfthly, it commands that the insolent and similar persons be restrained from offenses against monasteries. And this division suffices for a summary.

The same, in the General Council.

In each kingdom or province, saving the right of the diocesan pontiffs, let a common chapter of abbots and of priors who do not have their own abbots and who have not been accustomed to celebrate such a chapter be held every three years. Let all who do not have a canonical impediment come to it at one of the monasteries suitable for this, with this moderation applied: that none of them bring more than six mounts and eight persons. Moreover, [*charitably*] let them invite, at the beginnings of an innovation of this kind, two neighboring abbots of the Cistercian order to furnish them suitable counsel and aid, since they are more fully instructed by long custom in celebrating chapters of this kind. Without contradiction, let these associate with themselves two from among them whom they see to be expedient, and let these four preside over the whole chapter in such a way that none of them assume for himself from this the authority of prelacy, whence, when it is expedient, he can be changed by provident deliberation.

Let a chapter of this kind be celebrated continuously for some certain days according to the custom of the Cistercian order, in which diligent discussion is to be had concerning reformation of the order and regular observance. And let what has been established with the approval of those four be inviolably observed [*by all*], every excuse, [*and*] contradiction, and appeal having been removed, provision nonetheless having been made as to where the chapter ought to be celebrated at the following term. And let those who have come lead a common life and together make all common expenses proportionately, in such a way that, if all cannot stay in the same buildings, at least several may stay together in different houses.

Let religious and circumspect persons also be appointed in the same chapter who, according to the form prescribed for them, should take care in our place to visit the individual abbeys of the same kingdom or province, not only of monks but also of nuns, correcting and reforming those things that

they see to need the office of correction and reformation. If they recognize that the ruler of a place is to be removed entirely from administration, let them announce it to his own bishop so that he may take care to remove him. But if he does not do this, let the *visitors themselves* report it to the examination of the Apostolic See. We will and command regular canons to observe this same thing according to their order.

But if in this innovation any difficulty emerges that cannot be resolved through the aforesaid persons, let it be referred without scandal to the judgment of the Apostolic See, the other things that have been provided by concordant deliberation being irrefragably observed. Furthermore, let diocesan bishops take care so to reform the monasteries subject to them that, when the aforesaid visitors approach them, they may find in them more that is worthy of commendation than of correction, most attentively taking care lest the said monasteries be burdened by them with undue burdens; because, just as we wish the rights of superiors to be observed, so we are unwilling for inferiors to sustain injuries.

In addition to this, we strictly command both diocesan bishops and the persons who will preside over the chapters to be celebrated that, through ecclesiastical censure, appeal having been removed, they restrain advocates, patrons, vicedomini, rectors and consuls, magnates and knights, or any others, lest they presume to offend monasteries in persons or things; and if perhaps they have offended, let them not omit to compel them to satisfaction, so that the monks may be able more freely and quietly to serve almighty God.

Chapter VIII

Latin source headnote: First it treats of the correction of monks. Secondly, of the correction of abbots; thirdly, of visitors. Fourthly, of secular persons beneficed in monasteries. Fifthly, it extends the constitution to nuns. Let this suffice for a summary.

Honorius III, to the Abbots and Monks Constituted in Lombardy and the March of Treviso.

Those things that are providently ordained for the honor of religion *and the salvation of religious are to be strengthened by apostolic protection, so that they may be received more devoutly and observed more diligently. Since, therefore, through our beloved son the Abbot of Montisbellus certain chapters were presented to us that, for chastising the manifold transgressions and excesses he had found in certain monasteries, appeared laudably to be established for your salvation and honor, we caused them to be examined and corrected, and we command you to observe inviolably those that, for security, we caused to be fortified with the seals of our venerable brothers H., Bishop of Ostia, and N., Bishop of Tusculum. In addition to these things, we will and command by the authority of the present letters that the visitors summon to the general chapter the abbots and the priors not having their own abbots, both exempt and non-exempt, of Lombardy and the March, who have not been accustomed to celebrate a chapter of this kind; providing that, every canonical impediment having been removed, in the general chapter itself they compel by ecclesiastical censure, the obstacle of any contradiction and appeal having been removed, those who have contemned or neglected to come, and not relax until fitting satisfaction the sentence that they have duly rendered against them; and by the same censure they are to cause what has been ordained in the same chapter by provident deliberation to be firmly observed. Both they themselves and the visitors and others, according to the ministry of each, will render an account at the final examination to the Lord, in whose sight all things are naked and open, if they neglect to apply all the solicitude and diligence that ought to be expended upon the correction and reformation of the order and the visitation of the monasteries.*

Furthermore, when the visitors appointed by the general chapter of abbots according to the statute of the general council proceed to execute the office of visitation, let them inquire diligently concerning the condition of the monks and regular observances, and correct and reform in both spiritual and temporal matters what they see is to be corrected; yet in such a way that they cause offending monks to be corrected through the abbot of the place and salutary penance to be enjoined upon them according to the Rule of blessed Benedict and the apostolic institutes, not according to the norm of a depraved custom that has grown strong as though law in certain churches. Let the visitors themselves also strike, in our place, by regular censure and according to the measure of the fault, without preference of persons, those monks whom they find contumacious and rebellious, not sparing the rebellious because of their obstinacy or the power of their friends, but casting the diseased sheep out of the sheepfold, lest it infect the healthy sheep.

But if abbots are found negligent in correcting themselves or their monks according to the mandate of the visitors and the regular institutes, let them be denounced and reproved and so punished publicly in the general chapter that their punishment may be an example to others. But if any non-exempt abbot is found by the visitors to be excessively negligent and remiss, let them announce it without delay to the diocesan of the place, and through him let a faithful and provident coadjutor be given to the abbot until the general chapter. But if he is found to be a dissipator or otherwise deservedly to be removed, after this has been announced to him by the visitors, let him be removed by the diocesan from governance of the abbey without the clamor of judicial proceedings, and meanwhile let a suitable administrator be provided for the monastery to bear care of its temporal things until the monastery itself has been provided with an abbot. But if perhaps the bishop is unwilling or neglects to fulfill this, let the visitors or those presiding in the general chapter not defer intimating the bishop's default to the Apostolic See.

We command these same things to be done concerning exempt abbots through the visitors or those presiding *in* the general chapter, *only* their deposition being reserved to the Apostolic See, so that, when an abbot who appears ought to be removed has meanwhile been suspended from administration by the visitors or those presiding in the chapter, a suitable administrator may be deputed to the monastery. Moreover, let those presiding over the chapter announce to us through faithful and prudent messengers their excesses and the other matters that appear should be intimated; to these messengers let sufficient expenses be ministered from the common contribution of the abbots according to the means of each. Moreover, let the succeeding visitors diligently seek out the footsteps of the previous visitors and report their negligences and excesses to the following general chapter, so that according to the fault they may publicly bear the punishment due. We command this same thing also to be observed concerning the abbots presiding over the general chapter.

We also command that henceforth in no monastery are abbots and monks to receive secular clerics to prebends; nor let those who have already been received strive to claim for themselves a place or voice in the chapter, dormitory, refectory, or cloister, or presume importunately to mingle themselves with the assemblies of the monks; but, content with the benefices granted to them, let them conduct themselves honorably, faithfully furnishing appropriate services in the monasteries, and demand or usurp nothing further in spiritual or temporal matters in the monasteries themselves. But if any such persons are found criminal by the visitors, let them be deprived of the same benefices through the

diocesan bishop in non-exempt monasteries, and through the visitors or those presiding over the general chapter in exempt *monasteries*. Moreover, we command all these things to be observed also in monasteries that do not have their own abbots but priors, and also in monasteries of nuns, as to the articles fitting abbesses and nuns.

Title XXXVI: On Religious Houses, That They Be Subject to the Bishop

Chapter I

Latin source headnote: If it is doubtful in whose diocese a basilica to be consecrated is situated, that bishop who previously exercised episcopal rights in that place will consecrate it.

Gregory, to Victor, Archbishop of Naples.

But now, concerning *this* basilica that is to be dedicated, *this* ought to be investigated: *who—that is,* the bishop of which city—before *the basilica that has recently been constructed* was founded, baptized the inhabitants, and to whose confirmation they resorted with annual devotion. For it is not fitting that these things be determined by boundaries or places, but *that the diocese be made his who is described above, so that it may be established by whom the inhabitants were cleansed through the laver of regeneration. And therefore, dearest brothers, all ambiguities having been removed and every circumlocution set aside, it is fitting that you investigate these things by every means, so that* he *especially* may be called to the consecration to whom it is established that permission ought to be granted by the method we have written.

Chapter II

Latin source headnote: No right is lost by the bishop in whose diocese a church is situated when the Pope unites that church to a church of another diocese. And it is an everyday case.

The same, to Abbot Agapitus.

Because the monastery situated on the Marcian estate *in the province of Campania* is said, through the action of hostility, to have been [*so*] *utterly* desolated [*of its community*] [*that not even one monk remained from it who ought to apply any solicitude or care there,*] we have considered it *useful* that it be united to your monastery with all its things and the actions that belong to it, [*so that you may have free and wholly unquestioned license to hold its things or vindicate them from those detaining them. Let it also belong to your diligence to depute monks there who, at a time when there is a respite from the enemy, ought both to celebrate the work of God there and to serve fittingly. Nor may you presume to neglect it under any pretext, since it is committed to your care for this reason, that you ought to apply solicitude there.*] Nevertheless, know that we have committed that monastery to your ordering in such a way that jurisdiction there is to be held not by the Bishop of Sorrento, in whose city your monastery is situated, but by the Bishop of Nocera, whose diocese it is. For we dispose the ordering of this place in such a way that nevertheless we preserve inviolate for each bishop his own rights.

Chapter III

Latin source headnote: All pious places are subject to the bishop, and through his solicitude they ought to be ordered for the use for which they were destined.

From the decrees of Pope Eugenius.

Concerning hospices and other similar places, through the solicitude of the bishops in whose dioceses they exist, let them be ordered toward those same useful purposes for which they were established.

Chapter IV

Latin source headnote: A place deputed by authority of the bishop to the use of hospitality is religious and ought not return to worldly uses.

Urban III, to the Bishop of Rimini.

To these things, *concerning what was asked of us—whether a hospital house can be changed to a secular condition* —we respond to your inquiry in this way: if *that* place was destined by authority of the pontiff for the use of hospitality and the provision of the poor, as is customary, since it is religious it ought not be deputed to worldly uses, just as ancient custom unquestionably observes concerning vestments and wooden vessels and other utensils deputed by the pontiff to the cultivation of religion, and the sanctions of the venerable Fathers teach.

Chapter V

Latin source headnote: A religious place ought to be reformed with religious persons only, not with secular persons, unless religious persons are lacking.

Innocent III, to the Patriarch of Constantinople.

Among four (*And below:* [*cf. c.* 8, *On Majority and Obedience,* I. 33.]) *Concerning also the monasteries of the Greeks to be converted into secular canonries, we respond to your fraternity in this way:* As long as the monasteries can remain ordered through regular men, *whether Greeks or Latins*, they are not to be transferred to secular clerics. But if regulars are lacking, secular clerics will be able to be ordained in them because of their deficiency. [*Furthermore, etc. Given at Ferentino, on the fourth day before the Nones of August, in the ninth year.* 1206.]

Chapter VI

Latin source headnote: A church situated in the diocese of a bishop is bound to answer to him in episcopal rights unless they appear to have been lawfully remitted; and the bishop, when remitting episcopal rights, can retain a payment for himself.

The same, to the Abbot and Brothers of Grottaferrata.

Constituted in our presence, *our venerable brother* the Bishop of Albano sought episcopal right from you on two grounds in the church of the castle called Paul's, in which he acknowledged the right of patronage to your monastery: *first*, because it was situated in the diocese of Albano and therefore by common law was bound to answer to him in episcopal rights; *second, because in many privileges of the Roman Pontiffs distinguishing the boundaries of the diocese of Albano, among the other churches in which he exercises jurisdiction, this church is confirmed to the church of Albano by apostolic authority.* But your administrator proposed to the contrary that, although the church was situated in the diocese of Albano, *and its name had been inscribed in the privilege of that bishop not without the vice of surreption*, it nevertheless was not bound to answer to him in anything, since *Alberic, formerly its founder, with the assent of Pope B. of happy memory, our predecessor, had conferred the often-mentioned church upon the monastery of*

Grottaferrata. Furthermore, Dominic, Bishop of Labico, *concerning whom there was no contention between the parties*, who had been Bishop of Albano, granted in emphyteusis to your monastery, under an annual payment of eight current denarii—*which the public instrument names "annatas in capite"*—all the churches pertaining to your monastery that were situated in his diocese, and whatever right he had both in your *Grottaferrata* monastery and in those churches; namely, so that it would be lawful for the abbot and brothers *of the same monastery* to obtain from whatever bishop they wished both the ordination of clerics and the consecration of altars in the monastery itself and the aforesaid churches. In them he also granted you a third part of the mortuary dues; and Pope C., our predecessor, confirmed by *his privilege* what had been done by him, *and from certain knowledge established that it was to be observed perpetually*. But, even if that church had at some time been subject to the church of Albano, your monastery *nevertheless* could defend itself by lawful prescription, since it had possessed it peacefully for forty years, *which the same administrator endeavored to prove through witnesses*.

The administrator of the aforesaid bishop, however, *responded to the objections that the grant of the founder did not harm the church of Albano, since the founder had granted only the right of patronage to the aforesaid monastery, and he himself was not moving a controversy against you concerning the right of patronage. But* he said that the grant of the Bishop of Labico was not valid, as containing simoniacal depravity. For since he had granted *the same* monastery a third part of the mortuary dues and had granted it full liberty both in the ordinations of clerics and in the consecrations of altars—*namely, so that it could obtain them from whatever bishop it wished without anyone's contradiction*—there is no doubt that, since these things are spiritual, by the very fact that he received for them the recompense of a fixed payment he committed the vice of simony. Hence a contract of this kind, *as simoniacal*, obtains no firmness. Moreover, the confirmation of the Apostolic See had been obtained *concerning this* through surreption, since no mention of the payment was made in it.

(*And below:*) Since, however, it is neither unusual nor new that, when bishops have granted *some churches in both spiritual and temporal matters* to pious places, they reserve something for themselves in them under the name of a payment, we also, when we grant *either* the privilege of liberty or the protection of defense to some churches, gratuitously receive a payment gratuitously offered, and in our letters, for the memory of our successors, express the payment and also its amount. (*And below:*) *We therefore*, after hearing *these and other things proposed on both sides*, by definitive sentence condemn the administrator of your monastery to the administrator of that bishop, in the name of the church *of Labico*, for payment of the aforesaid pension according to the proportion that falls upon the aforesaid church and for restitution, according to the same proportion, of what was withheld for forty years; and we absolve the same administrator of yours from the prosecution of the administrator of that bishop concerning the other matters, imposing perpetual silence upon him. *Although a fixed penalty that the party not observing the contract would pay to the party observing it was expressed in the instrument of grant of the aforesaid Bishop of Labico, nevertheless, since each party is proved by its own confession to have acted contrary to it—since your party withheld the payment from the bishop, and the bishop exacted a procuration from the same church, as the aforesaid administrator proposed—we absolve each party from it*.

Chapter VII

Latin source headnote: A bishop seeking a church as to temporal and spiritual matters prevails in spiritual matters by the very fact that he proves it to be in his diocese, if it does not appear to be

exempt; but in temporal matters he loses unless the other party establishes his right. And in this last point it is a notable case.

The same, to the Abbot and Convent of Farfa.

When our venerable brother I., Bishop of Sabina, *before our beloved sons Roger, cardinal priest of the title of Saint Anastasia, and Pelagius, cardinal deacon of Saint Lucia at Septisolium, whom we granted as auditors to him and to Richard, your proctor,* had sought the church of Sant'Angelo de Cauceia with its appurtenances and possessions, asserting that it pertained to him in both spiritual and temporal matters, [*advancing first the possessory and afterward the petitory action,*] he alleged before all else the common law: because, since it was constituted in the diocese of Sabina, *as he said,* it ought to stand under his power [*according to the canonical sanctions. But when it was denied on your side that the same church was constituted in the aforesaid diocese, the same bishop, in order to prove this, exhibited before them a privilege of Pope Anastasius of good memory, our predecessor, in which Mount Tancia is set down as a boundary of the bishopric of Sabina, and the same church of Sant'Angelo is numbered among the other churches of the diocese of Sabina and is said to have been constructed on the aforesaid mountain. He showed this same thing through a public instrument that your proctor was using, in which it is said that the said church is situated in the territory of Sabina, since the diocese of Sabina extends much farther than the territory of Sabina.*]

The *same bishop* also endeavored to show that the said church pertained to him in temporal matters through a public instrument in which it was expressly contained that I., Bishop of Sabina, had leased the said church with its appurtenances to H., Abbot of Farfa, and to two persons after him, for an annual payment of four Pavia solidi, *to be paid on the Assumption of the Blessed Virgin*. But your party proposed that no faith at all should be placed in the aforesaid instrument because of interlinear writing and an erasure made [*in*] a suspicious place, namely where the notation of the time is recited. *It was furthermore proposed on the bishop's side that, since for a long time a fixed payment had been paid from the church of Sant'Angelo in the name of your monastery to the church of Sabina, it was manifestly clear that [the aforesaid church] belonged by proprietary right to that same church by which the lease had been made.* [*Furthermore, since Pope Lucius of good memory, our predecessor, had enjoined the people of Sabina to labor for the recovery of Tancia, which you held at that time, and through them both Tancia and the church of Sant'Angelo had been restored to Peter de Bono, then proctor of the bishopric of Sabina, and you afterward caused the same church to be occupied, restitution of it had to be made to the same bishop, as that bishop asserted that all these things had been proved by suitable witnesses.*]

To these things the aforesaid proctor responded that, even though certain witnesses deposed that they had seen the church of Sant'Angelo pay a payment of four solidi to the Bishop of Sabina, nevertheless no prejudice could thereby be generated against your monastery, since it does not appear that the payment itself was made on behalf of the monastery; and although the witnesses also assert that they had seen the specified payment discharged many times, it is nevertheless not shown to have been furnished for so much time that it extends to lawful prescription. Likewise, just as a lease made is not sufficient for ownership of the thing, neither is payment nor receipt of a payment. [*Although the same Pope Lucius, our predecessor, had also given the above-written mandate to the people of Sabina after having been misled, believing, as had been suggested to him, that the aforesaid place and church pertained to the bishopric of Sabina, and the monks of Farfa, repelling the injury inflicted by those people of Sabina, took care to retain the aforesaid church, restitution on this account was not to be made to the bishop, especially since he would immediately suffer an adverse judgment in the petitory action, and he who seeks what he is going to return is known*

to act fraudulently, as is contained in the civil laws. The same bishop also vindicated for himself in that church half the special offerings of certain days, which the proctor of your monastery plainly acknowledged to him.]

Therefore, *after these and other things that each party took care to propose before the aforesaid cardinals had been understood,* because it was established for us that the aforesaid *church of Sant'Angelo was* constituted in the diocese of Sabina, *with the counsel of our brothers* we adjudged episcopal right in all spiritual matters in it to the same bishop, only those things excepted that are known to have been withdrawn from him through authentic writings, [*this being expressed for caution: that he is to receive annually in the same church half the offerings of the aforesaid days, which, as was said, the aforesaid proctor acknowledged to him.*] But because we recognized the aforesaid instrument, through which the bishop intended to vindicate [*for himself*] the *aforesaid* church as to temporal matters, to be invalid for producing proof concerning this, as being suspect at law because of the aforesaid matters, we held that you were to be absolved *by sentence* from his prosecution as to the temporal matters of the same church, *imposing silence upon him concerning this.* [*Let no one therefore, etc. Given at Viterbo, on the second day before the Nones of August, in the twelfth year.* 1209.]

Chapter VIII

Latin source headnote: A monastery is subject to the bishop in whose diocese it is situated unless it is proved exempt. This it says with regard to the title.

The same.

When our beloved son [*F., Dean of Orense, messenger of our venerable brother the Bishop of Orense, and Master Robert, monk of Celanova and messenger of his abbot, had approached the Apostolic See, we granted them our beloved son P., cardinal deacon of Santa Maria in Via Lata, as auditor. Before him it was proposed on the bishop's side that, when the same bishop had summoned to the synod the abbot who was subject to him by diocesan law, the abbot not only did not come to him but even prohibited the priors of Saint Peter and Saint Columba and the archpriest of Cauci, constituted in the diocese of Orense, from attempting to come to that bishop's synod, although they too were summoned. And when the said bishop, so that he might at least humbly recall the abbot to the good of obedience and overcome evil with good, had commanded him to await him in the monastery at an appointed time, although the bishop came there as he had promised, he did not find the abbot, found the gates of the monastery closed, and was granted no access to the monks. On this account he suspended the abbot and placed the monastery under interdict. But when the abbot himself did not even on this account withdraw from his purpose of contumacy or observe the sentences rendered against him and the monastery, he promulgated a sentence of excommunication against him, which the said bishop's messenger petitioned us to confirm. But the messenger of the opposing party proposed that his petition was not to be admitted because, although the monastery itself was constructed within the boundaries of the diocese of Orense, it had nevertheless always been free and exempt from every jurisdiction and yoke of the church of Orense from the time of its foundation. Furthermore, if the bishop had any jurisdiction in it—which was not true—the same messenger asserted that the sentence subsequently rendered against him and the monastery obtained no firmness, because the abbot had previously appealed to the Apostolic See from every grievance. The same messenger also complained on behalf of the chapter of Celanova that the said bishop had so circumvented their abbot that, without their knowledge and contrary to the immunity of that church, he promised obedience to him anew.*] *We therefore, instructed concerning the aforesaid matters through the aforesaid cardinal,* because *that* cause could not be terminated in our presence, *inasmuch as* the messenger of the monastery did not have letters concerning procuration or ratification, held that it should be committed to your examination,

commanding your discretion through apostolic writings that, if it is established *for you* that the *same* abbot lawfully appealed *concerning this* to the Apostolic See before the bishop rendered sentences of suspension or excommunication against him and of interdict against the monastery, or that the monastery *is* exempt from the jurisdiction of the same bishop—notwithstanding that the abbot, circumvented by him, *as is said*, promised obedience to him anew without the assent of his brothers, since fraud and deceit ought not assist him—you are to judge, *all appeal having been entirely removed*, that those sentences are not valid; *otherwise, through ecclesiastical censure, you are to cause them to be inviolably observed until suitable satisfaction.*

But if *perhaps* the *same* abbot fails in proof of exemption and cannot defend himself by lawful prescription, although he proves that he appealed before the aforesaid sentences, you are nevertheless to judge that the *same* monastery is subject to the church of Orense, in whose diocese it was founded. Similarly, if he fails in proof of the appeal, but exemption or lawful prescription is established for you, you are to absolve both the abbot and the monastery entirely from the prosecution of the *same* bishop *and of that church*, [*and cause what you decree, etc. Given at the Lateran, on the seventh day before the Kalends of April.* 1198.]

Chapter IX

Latin source headnote: It is not lawful to establish a new religious order without the authority of the Roman Pontiff, nor can anyone be an abbot or monk in different monasteries. Thus it is principally summarized, although it contains several statements.

The same, in the general council.

Lest excessive diversity of religious orders induce grave confusion in the church of God, we firmly prohibit anyone henceforth from devising a new religious order; rather, whoever wishes to be converted to religion is to assume one of the approved orders. Similarly, whoever wishes to found a new religious house is to receive a rule and institution from the [*religious orders*] approved. We also prohibit anyone from presuming to hold the place of a monk in different monasteries, or one abbot from presiding over several monasteries.

Title XXXVII: On the Chapels of Monks and Other Religious

Chapter I

Latin source headnote: Not monks but secular clerics are placed over a cure subject to a monastery, and they are subject to the bishops.

Urban III.

In churches where monks dwell, let the people not be governed through a monk; rather, let a chaplain who is to govern the people be instituted by the bishop with the counsel of the monks, yet *in such a way* that both his ordination and deposition and the entire conduct of his life depend upon the judgment of the bishop alone.

Chapter II

Latin source headnote: If a non-cathedral church vindicates a right for itself in another church, it will prevail only as to those things that it proves are owed to it by prescription or in another lawful manner. This it says according to the common and true understanding.

Innocent III, to the Archpriest and Clerics of Saint Cecilia.

Your beloved son M., syndic of your church, *constituted in our presence*, advancing both the possessory and the petitory action, sought from the administrator of San Lorenzo in Piscinula subjection in scrutinies, baptism, *processions*, chapters, and similar matters. For since the church of San Lorenzo is situated in your parish, by common law, *as the same syndic proposed*, it ought to be subject to your church in all the aforesaid matters, *unless it could defend itself either by special privilege or by lawful prescription*, because it has no privilege of exemption, nor could it allege prescription for itself, since that church of Saint Cecilia had prescribed against it, as he said was lawfully proved through witnesses. Furthermore, when *formerly* a question concerning the aforesaid matters was being litigated between your church and the aforesaid church before Pope C. *of good memory*, our predecessor, M., priest of the same church, spontaneously confessed that he owed scrutiny and baptism to the church of Saint Cecilia, *and thus acknowledged your right as to ownership*. And when your party had produced witnesses *sufficient and suitable* who *firmly* asserted that they had summoned him to chapter at different times and that he had come, and they were prepared to swear, the aforesaid priest confessed that he had gone to chapter when summoned. Hence our aforesaid predecessor took care to reinvest your church with possession of chapter, of which it had complained that it was despoiled, saving the right of ownership of the church of San Lorenzo, as is contained in his letters. Through this, therefore, your syndic wished to prove *both* ownership as to scrutiny and baptism and possession as to chapter.

To these things, *however*, the administrator of San Lorenzo responded to the contrary, asserting that this church pertained immediately to the Roman Church. For since it had been a monastery of nuns, *as is taught from many authentic writings*, and since it is generally observed in the City that no monastery is subject to a titular church, it seemed incongruous that regulars should be subjected to seculars. Furthermore, even to this day we freely exercise institution and removal in it, *since Pope C. of good memory, our predecessor, also established in it without anyone's contradiction our beloved son M., our scribe, as archpriest. Thus the said administrator wished to prove that the church itself was free and existed in possession of liberty. Therefore, since he has common law in his favor in this—that, namely, all the monasteries of the City pertain immediately to the Roman Church—faith is not in any way to be placed in one affirming the contrary unless he introduces a special privilege concerning this. Moreover, the same administrator entirely denied what was said, that it was situated in your parish. But even if this were true, he could nevertheless defend himself sufficiently by the aforesaid reason. The confession of the priest M. concerning scrutiny and baptism could not prejudice the same church, since issue had not been joined concerning these things in the presence of that same predecessor of ours, as is apparent from the form of the petition and conclusion. Nor had your church used this sentence until now, but had caused it to be suppressed up to these times.* (*And below:*) We therefore, after hearing the things proposed, *the reasons and allegations, instruments and attestations having been more fully understood, and counsel having been deliberated with our brothers*, condemn the administrator *of the same church* of San Lorenzo to your syndic as to baptism, scrutiny, *and processions*, yet *in such a way* that through this no prejudice is generated against the Roman Church if at some time it should decide to prosecute its own right. But

in institution, removal, and chapter we absolve the same administrator entirely from the prosecution of your syndic, imposing perpetual silence upon your syndic concerning this.

Chapter III

Latin source headnote: Individual monks cannot dwell alone in monastic priories, even if they have an apostolic rescript concerning this, unless mention of the Lateran Council is made in it.

Honorius III, to the Bishop of Vannes.

It was proposed on your part *before us that, when the abbot and convent of Rivensis in the diocese of Vannes formerly complained that you were endeavoring to compel them to establish several monks in certain of their priories in your diocese, in each of which individual monks had hitherto remained, since their means did not suffice for more, we commanded the Abbot of Saint-Aubin of Angers and his colleagues through our letters that, upon inquiring into the means of those places, they were to cause several monks to be established in each of them if their means sufficed for several; otherwise, by our present authority, they were to prohibit you from troubling the aforesaid abbot and convent concerning the establishment of several monks in them. Hence the same* Abbot and Convent of Rivensis in the diocese of Vannes assert that, by occasion of the letters of the Apostolic See, it was granted to them that individual monks may dwell in each of the priories *of their places* if their means do not suffice for several. But since this is contrary to the Lateran Council, of which no mention is made in the aforesaid letters, *you petitioned to be instructed by our response whether it had been our intention through such letters to dispense with the aforesaid abbot and convent contrary to that council. We therefore* respond briefly to your fraternity that we do not believe letters *of this tenor* to have emanated from the Apostolic See. But if perhaps they did emanate through preoccupation, we do not will the aforesaid council to be derogated through this.

Chapter IV

Latin source headnote: The ordinary compels an abbot either to recall monks from priories to the cloister or to join companions to them.

The same, to the Archbishop of Bordeaux.

It has reached our hearing, *as you signified*, that certain monks subject to you by diocesan law dwell alone in certain priories contrary to the statute of the general council. Therefore we command *your fraternity* that, warning having been premised, you are to compel through ecclesiastical censure, *appeal having been removed*, the abbots or priors of the *same monks* either to recall them to the cloister, causing service in those churches to be performed through secular clerics, or to associate other monks with them, with whom they may be able to lead the regular life, *provided that you do not extend your hand against exempt persons by occasion of a mandate of this kind*.

Title XXXVIII: On the Right of Patronage

Chapter I

Latin source headnote: If through the discord of the patrons a church lacks an administrator, divine services cease in the church, the relics are removed, and the doors are closed, if provision cannot otherwise be made for the church without scandal. This it says together with the following chapter.

From the Council of Milan.

It has been reported *to us that churches established on private property are divided among the heirs, and so great a dissension arises through the same division that four parts are made of one altar and each part has its individual priests, which can in no way be conducted without discord and dissension. Hence* it has seemed to us that a church ought not be divided among the heirs of the patron. And if *they come into contention and* dissensions arise among them on account of which a priest cannot canonically perform his office there, if provision cannot be made otherwise, let it be commanded by the bishop *of the city* that the solemnities of Mass are in no way to be celebrated there until *they* return to concord and *by equal vote and counsel* that *church* canonically has a priest who may be able freely to exercise his ministry.

Chapter II

Latin source headnote: It is summarized in the preceding chapter.

From the Council of Tribur.

Whatever church *is held by several coheirs is to be administered on every side with concordant unanimity, lest through any disputes the service of God be diminished and the care of the people be conducted irreligiously*. But if it happens that patrons disagree *concerning* a church, so that they are unwilling for it to be administered under one priest, *and on this account quarrels and contentions begin to become frequent both among themselves and among the clerics, because according to the Apostle it does not befit the servants of God to quarrel*, the bishop, if he cannot otherwise provide for it, is to remove the relics from there, *place them honorably with great care*, and close the doors of the same church, *sealing them under his seal*, so that no one may celebrate the sacred mystery in it before *with concordant unanimity* they *all* elect one priest who is suitable to administer the sacred things *and usefully to preside over the people of God*.

Chapter III

Latin source headnote: If the patrons disagree in presenting, the person presented by the greater part is preferred if he is suitable; and if this cannot be done without scandal, or the patrons do not present within the due time, the bishop will order the church.

From the Lateran Council.

Because in certain places the founders of churches or their heirs abuse the power in which the church has hitherto sustained them, *and, although there ought to be one in the church of God who presides, they themselves endeavor to elect several without regard for subjection*, and, although one church ought to belong to one rector, through their disagreement they present several: *therefore* we establish by the present decree that, if perhaps the votes of the founders have divided into several parties, he is to be placed over the church who is supported by greater merits and is elected and approved by the assent of more persons. But if this cannot be done without scandal, let the bishop order the church as he sees that it can best be ordered according to God. And let him also do this same thing if a question concerning the right of patronage has arisen among some persons and it has not been definitively decided within four months to whom it belongs.

Chapter IV

Latin source headnote: Lay patrons who institute and remove clerics in churches, even patronal churches, or otherwise administer their goods, are excommunicated. And clerics who receive

institution from laymen are deprived of communion.

From the same council.

Furthermore, because the audacity of certain laymen has advanced so far that, the authority of the bishops having been disregarded, they institute clerics in churches and remove them [*even*] when they wish, and generally distribute the possession and other ecclesiastical goods according to their will, *and presume to burden both the churches themselves and their men with tallages and exactions*, we decree that *those who henceforth presume to do these things* are to be struck with anathema. Moreover, *a priest or* cleric who receives a church through laymen without the authority of his own bishop is to be deprived of communion; and, if he persists, he is to be deposed from ecclesiastical ministry and order. [*Indeed, because laymen, etc.*]

Chapter V

Latin source headnote: If a lay patron successively presents two persons and the second is instituted by the bishop, the institution is valid. This it says first. A patron cannot confer a patronal church upon a cleric or another church, or donate it to another.

Alexander III, to the Archbishop of York.

Concerning what you consult us—if a suitable cleric presented to a vacant church was not admitted by the diocesan bishop, and afterward another suitable cleric was presented and, having been instituted by the bishop, held corporal possession, whether, when the first cleric seeks the church, the later one ought to be removed or the later one preferred to the first—there is no doubt that in this case the condition of the possessor is better, because, before the presentation is approved by the diocesan bishop, what had been begun by the patron is not ratified. For the rest, we respond to your prudence that, if laymen draw up instruments for clerics or colleges concerning grants or donations in these or similar words, "I have granted or given the church and confirmed it by the present charter," if the bishop's consent has not acceded, nothing appears to have been done, because that is held as not given which is given by one who by law cannot donate it.

Chapter VI

Latin source headnote: One who purchases or buys a right of patronage ought to be despoiled of it. Or thus: One who buys a right of patronage so that he may present a son or nephew, or whomever he wishes, ought to be deprived of it. This it says, and either reading can be sustained.

The same, to the Bishop of Exeter.

Because certain clerics *of your jurisdiction, as we have learned*, purchase advowsons of churches, or acquire them in whatever way they can, so that afterward their sons or nephews may be presented to the same churches, *we, wishing entirely to eradicate so depraved a custom, nevertheless command and* enjoin you by authority of the presents that you take care to prohibit this more strictly, despoiling them, appeal having been postponed, of advowsons acquired in this way.

Chapter VII

Latin source headnote: A right of patronage contained in some aggregate of temporal things passes with that aggregate, even if the aggregate passes only as to beneficial ownership, unless the right of

patronage is specifically excepted. This it says, and it is a notable case and is alleged daily.

The same, to the Bishop of Hereford and the Abbot of Forde.

We learned from the letters of I., Bishop of Salisbury, that, when the parson of the church of Laton had died, G., a knight who held at farm from the monastery of Winton the vill in which the church is situated, presented the cleric G. to the aforesaid bishop for that vacant church. Afterward, the abbess of the aforesaid monastery, *coming to the bishop*, presented another to him for the above-written church. When he was unwilling to receive the person presented by her, she lodged a grave complaint against the bishop before the Archbishop of Canterbury. *The archbishop, because it seemed to him that the knight's act concerning the aforesaid presentation was of no moment, enjoined the aforesaid bishop by virtue of obedience to receive and induct into possession that person whom the abbess had determined to present to him.* (*And below:*) We command that, if it is established for you that the aforesaid vill was granted at farm to the aforesaid knight without the right of patronage having been excepted, or that, before a controversy concerning the right of patronage arose between the abbess and the knight, the aforesaid G. *of Leicester* had been instituted in the aforesaid church by the bishop upon the knight's presentation, you are to adjudge *that church* to him, provided he is otherwise suitable, in such a way that, if the abbess prevails against the knight, he ought to answer to her concerning the temporalities.

Chapter VIII

Latin source headnote: If a layman grants a church to a cleric or religious place without the bishop's consent, notwithstanding such a grant, which is invalid, he will be able to present to that same church when it becomes vacant and to grant it to another church with the bishop's consent. This it says together with the chapters *When Laymen* and *It Was Suggested,* below, in the same title.

The same, to the Bishop of Winchester.

We did not consider, [*however*], that this should be passed over, *concerning which we understood you to be doubtful*: if *some* layman, without consulting the bishop, grants a church that is not vacant to *some* religious house, and afterward, when it becomes vacant, *some* cleric is instituted there by the diocesan bishop upon the presentation of the same layman, the prior grant cannot *and ought not* in any way impede the second institution from being held ratified and firm, since that grant can by law be of no moment: both because it was made concerning a thing not vacant, and because a layman without the bishop's authority can give churches to no one, although he has free power to confer the right of patronage upon a religious place. But if, while the church is vacant, he confers the right of patronage upon a religious place, and *afterward* someone is instituted in that church without the presentation of the brothers of the same place, according to the rigor of law his institution is to be invalidated.

Chapter IX

Latin source headnote: Those instituted in patronal churches cannot be changed by new patrons, nor may alternations of churches be made through them.

The same, to the same.

We have heard, through a complaint *sent to us by letter from the prior and brothers of Lauth, that R., formerly Earl of Hereford, acknowledged before I., formerly Bishop of Worcester of good memory, the right that the same prior and brothers ought to have in the church of Wic. from the donation of H. de Lacy, founder of their church and*

father-in-law of R. himself. Hence the bishop afterward invested the aforesaid prior and brothers with it, no one objecting or contradicting, and they thereafter possessed it quietly and peacefully. Then, when a separation had been pronounced by ecclesiastical judgment between the aforesaid earl and C., his wife, in whose patrimony that church is contained, the same C. married W. of Poitiers, who entirely withdrew the fruits of the aforesaid church from the aforesaid prior and brothers and converted them, without episcopal authority, to the uses of R., priest of the same place. And when afterward, W. having been removed from their midst, the aforesaid C. was joined in marriage to a third husband, namely W. de Mediran, the same W., persisting in the same temerity as the other W., began to maintain and foster the aforesaid R. in the aforesaid church against the aforesaid prior, saying that what the above-named Bishop I. [*did*] *concerning the church, which exists under the advowson of his wife, while she was in the power of that man from whom she is known afterward to have been separated, ought to have no firmness, especially since, as he asserts, his wife's patrimony would not have been restored to him in full unless he could fulfill his will concerning that church. Hence, because* it seems altogether absurd, *and to be entirely eliminated from the church of God*, that at each change of patrons according to human circumstance the orderings of churches should be changed, *and it was not lawful for any of the successors to revoke what had thus been done by the above-written H., we command your fraternity by apostolic writings, enjoining that you diligently and studiously inquire into the truth of the matter and, if you find it to be as narrated above, restore the aforesaid church to the often-mentioned prior and brothers, every pretext and appeal ceasing, and cause them to possess it in peace.* And let [not] *alternations of this kind* in churches be presumed by advocates or others, *but, delay having been removed, strike those who presume them with the bond of excommunication until worthy satisfaction.*

Chapter X

Latin source headnote: A patron cannot confer a church upon a cleric, and, if he confers it, notwithstanding this he can present a rector to the church.

The same, to the Archbishop of York.

When laymen, without the bishops' knowledge or consent, grant to clerics churches in which they have the right of patronage and, afterward, moved by repentance, present others to the same churches *to the bishops*, and those persons are instituted in the same churches by the bishops upon their presentation, the institution of those who are instituted by the bishop's authority ought to stand *and be firmly observed*, the prior grant, which is null, having been altogether annulled. For it is not lawful for laymen to ordain clerics in churches by their own presumption.

Chapter XI

Latin source headnote: Religious cannot vindicate or retain churches granted to them by laymen without the diocesan's consent, unless they have lawfully prescribed or the diocesan afterward consented.

The same, to the Abbots, Priors, and Clerics Constituted throughout the Archbishopric of York.

By pastoral care *we are constrained by necessity and provoked by the authority of the office enjoined upon us to labor with vigilant diligence for the condition of churches, and to provide with more attentive solicitude that they not be conferred upon anyone contrary to the order of law. Hence, commanding through apostolic writings,* we command your whole body that none of you presume to vindicate for himself any churches from the donation of laymen, or to retain those acquired in this way, unless the authority and consent of the

diocesan bishop are present, unless he is fortified by lawful prescription or has *perhaps* afterward obtained the consent of the diocesan bishop. For since laymen cannot transfer to others anything except the right they possess, *we decree that* grants of this kind *lack force and* judge them to be entirely void.

Chapter XII

Latin source headnote: If the patrons of a vacant church do not present within the time granted by law, the bishop will order the church.

The same, to the Bishop of Langres.

But if *at any time* the ordering of some church belongs to your institution and is *maliciously* prolonged by a controversy among laymen disputing with one another concerning the right of patronage, let it be lawful for you, *by our authority*, appeal having been removed, to institute a suitable person in that *church*, in such a way that *the same person* is to be presented by the one who prevails in the right of patronage.

Chapter XIII

Latin source headnote: If the right of patronage of a church comes to exempt persons, through this the episcopal right ought not be harmed in anything.

The same, to the Hospitallers.

Since you have left the world, *so that you may be able to please our Creator in the citadel of contemplation, it befits you to abstain from those things that are contrary to reason, or that are subject to reproach or can blacken your reputation or fame. Hence, through apostolic writings, we more strictly* prohibit your whole body, when by reason of fiefs bought or otherwise acquired, or even in some other manner, you acquire the right of patronage in parochial churches, from *instituting priests in them except through the bishop, or* presuming to diminish *or in any way remove* the bishop's parochial right. *Nor are you to dare, contrary to the authentic writings of the Roman Church, to receive at divine offices in your chapels persons excommunicated by that bishop or by your archdeacons.*

Chapter XIV

Latin source headnote: Without the patron's consent no one can occupy a church.

The same.

We learned from the intimation of *our beloved son* O., a cleric, that, when his brother had liberally conferred upon him the right of patronage that he held in certain churches *constituted in the bishoprics of Lincoln and Salisbury*, certain *priests and others, by occasion of the aforesaid brother of O.*, occupied those *churches by violence* without his *will and* assent, and unjustly keep *them* occupied. *Therefore, because it belongs to us to recall to the path of rectitude those things that are attempted less orderly by some subjects, commanding your fraternity through apostolic writings,* we command that, after diligently investigating and learning the truth of the matter, if it is so *as has been said*, warning having been premised, you are to compel the *aforesaid priests who detain those churches* to restore them to the aforesaid cleric, to be ordered freely and peacefully through him. *But if the aforesaid priests should perhaps be unwilling to acquiesce in your admonition, every pretext and appeal ceasing, you are to subject them to excommunication and*

their lands, if they have any, to interdict, and cause divine offices to cease in the aforesaid churches as long as they remain occupied by any persons under the authority of the aforesaid knights. But if the detainers of the same churches still do not recover their senses, appeal ceasing, strike them with ecclesiastical censure.

Chapter XV

Latin source headnote: A patron cannot retain a church for himself or even grant it to another by his own authority.

The same, to the Bishop of Adonensis.

Your fraternity consulted us as to what you should do concerning clerics who vindicate for themselves by hereditary right churches constructed by their parents and are unwilling to answer to you concerning them, and concerning laymen who endeavor to give the aforesaid churches to their sons or nephews. But since the sanctuary of God cannot be held by hereditary right, *and it is entirely unworthy and absurd for anyone to occupy a church by his own authority or to detain churches thus occupied*, it is not fitting in any way to tolerate that *in your bishopric* clerics detain by their own authority churches founded by their parents, or that laymen grant those same churches to sons or any others.

Chapter XVI

Latin source headnote: A right of patronage cannot be sold by itself.

The same.

But concerning the right of patronage *in the aforesaid chapel, we* command your discretion that, if R. *Brito* purchased it, since it is incongruous *and entirely dishonorable* for a right of patronage, which is annexed to a spiritual thing, to be sold, you are to decree that contract void, *the remedy of appeal having been removed*, and, *supported by apostolic authority, you are not to defer revoking it*.

Chapter XVII

Latin source headnote: A patron cannot confer upon even a religious place the tithes of a church or another spiritual thing without the consent of the bishop or Pope.

The same.

Let no layman confer tithes, a church, or anything of ecclesiastical right upon monasteries or canons without the grant of his pontiff. And if any bishop is unwilling to consent because of wickedness or avarice, let it be announced to the Roman Pontiff, and then let what is to be offered be offered with his license.

Chapter XVIII

Latin source headnote: If a bishop is patron in a church of another diocese, the person presented by him ought to be admitted if he is suitable.

The same.

You signified (*And below:*) *Moreover,* if bishops, after their promotion, have obtained from the patrons of churches the presentations of persons to those churches for churches committed to them, suitable persons whom they present to them when vacant are to be admitted.

Chapter XIX

Latin source headnote: One instituted upon the presentation of a person who then possessed the right of patronage of a church ought not be removed, although that right is afterward evicted from him; it is otherwise if he did not possess it but was only believed to be the patron.

The same, to the Abbot of Saint Albert.

To the consultations (*And below:* [*cf. c.* 10, *On the Office of a Delegated Judge,* I. 29.]) *For the rest,* if any cleric was instituted by the ordinary judge in *some* church upon the presentation of one who was believed to be patron of that church, and afterward another person evicts the right of patronage in a judgment, the *cleric who was* instituted ought not for this reason to be removed from that *church* if, at the time of his presentation, the one who presented him possessed the right of patronage of the church, since from this no prejudice is generated in the future against the one who ought to have it by right. But if at that time he did *not* possess *the right of patronage*, but was only believed to be the patron, when [*nevertheless*] he was not *and did not have possession of the patronage*, he will be able to be removed from the same church *according to English custom. But donations, etc.* (*cf. c.* 4, *On Donations,* III. 24.)

Chapter XX

Latin source headnote: A second grant of a church made to another church by the bishop and patron is valid notwithstanding a prior grant made by the patron alone.

The same, to the Archbishop of York.

It was suggested *to our ears* that, when certain churches, with the assent of the lord of the soil *and* by authority of the Archbishop of York, had been granted and assigned as a prebend to the church of blessed P. of York, the canons of Newburgh endeavor to *weaken and* invalidate that grant by occasion of a donation that they assert *was* made to them previously. Hence, although the consent of the patrons is to be sought and awaited in donations of churches, nevertheless, because the *churches themselves* cannot be canonically granted unless pontifical authority intervenes, we signify *to your whole body* that the prior grant, if made with the patron's assent and by authority of the diocesan bishop, or if his assent afterward followed, is preferred to the later grant; otherwise, although it *was* made later, that grant ought to be preferred which is supported by the consent of the lord of the soil and the bishop's authority.

Chapter XXI

Latin source headnote: One who, after being warned, does not relinquish a church granted to him without the bishop's consent is removed from office and benefice. This it says. — (*To this, etc.:*) Laymen despoiling a church are excommunicated. This it says.

The same, to the Archbishops and Bishops Constituted throughout England.

It has been reported to us that certain persons, *drawn by excessive ambition*, by occasion of lay recognition *or secular power in the secular forum*, without seeking the bishop's hearing, presume to vindicate for themselves in your parishes *the patronage of churches and* ecclesiastical benefices. Therefore, since persons of this kind do not enter through the door but climb up by another way, and for this reason are unworthy to rejoice in the name or prerogative of a pastor, *commanding your*

fraternity through apostolic writings, we command that, if those *who are established to have obtained the patronage of churches or ecclesiastical benefices in the aforesaid manner* do not resign the aforesaid things after being admonished, unless they are fortified by *prescription or* an episcopal grant, you are to render them, *the evasion of appeal having been removed*, strangers to office and benefice; *and, if they do not desist even thus, bind them with the bond of anathema and hold and cause them to be held bound until worthy satisfaction.*

To this, because certain laymen despoil churches of *lands and other* possessions so that they may thus cause ecclesiastical men to litigate before a secular judge, we enjoin you *by authority of the presents* to take care to prohibit this publicly under threat of anathema. But if anyone is a contemner of your prohibition, *if it is manifest, appeal ceasing*, subject him to excommunication, *and until worthy satisfaction cause him attentively to be avoided as an excommunicated person*.

Chapter XXII

Latin source headnote: If a question of the right of patronage is not terminated within six months from the time of vacancy, the bishop can freely institute a rector there without presentation. This it says. But understand this of ecclesiastical patrons, for in the case of laymen four months suffice.

The same.

It befits you (*And below:* [*cf. c.* 4, *On Age and Quality,* I. 14.]) But as for those churches concerning whose patronage there is a controversy, if the controversy has not been terminated within six months after they become vacant, let it be lawful for you to order them with a suitable person, *the obstacle of appeal having been removed*. *To these things, etc.* (*cf. c.* 27, *On Appeals,* II. 28.)

Chapter XXIII

Latin source headnote: A patron cannot alienate a right of patronage by his own authority, nor exact anything temporal from the church unless at the time of foundation it was reserved to him by the diocesan.

Lucius III.

Furthermore, because advocates of churches *are known to have burst forth into such insolence that they institute and remove priests and other ecclesiastical men in those churches according to the judgment of their own will, and* presume to transfer the right of advowson to others under title of donation or purchase and by other contracts *even* according to their own will, extorting fodrum, lodging dues, regal dues, and similar things from the *same* churches as though from their own peasants, *and reducing to nothing according to their own judgment what the ministers of the churches do without consulting them*, we establish by the present decree that they—whether they are called advocates, patrons, vice-lords, custodians, or those having guardianships, or are designated by whatever other name—are to cease from burdens upon churches and exact nothing in them beyond the ancient and moderate revenues instituted by the bishops of the places; otherwise, if they exact anything else, they are to be subjected to excommunication. We also annul by the present constitution contracts of this kind that they have made or will make in the future, and decree *that they* have no force. *Moreover, lest the authority of the present decrees be eluded through the obstacle of appeal either in those things that have been said concerning heretics or in the coercion of advocates that we have described, we deny every remedy of appeal in the aforesaid chapters, intending to furnish no hearing at all to any persons appealing against these things.*

Chapter XXIV

Latin source headnote: When several persons are successively presented by a lay patron, a choice is given to the bishop; but among those presented by an ecclesiastical person, the person presented first is preferred. This it says specifically, and it is one of the more principal chapters of the title.

The same, to the Bishop of Norwich.

But when an advocate has presented *one* suitable cleric to the bishop and afterward, that person not having been rejected, has petitioned that another equally suitable cleric be admitted to the same church, which of them is to be preferred to the other we believe should be left to the bishop's judgment, if the one to whom the right of presenting belongs is a layman. But if a college or ecclesiastical person held the presentation, he who is earlier in time appears to be stronger in right.

Chapter XXV

Latin source headnote: From the construction of a church made with the bishop's consent, a right of patronage is acquired. This first. A patron does not elect a prelate in a conventual church, but he does so in a chapel. This second. The honor of procession is owed to the patron, and he is supported by the church if he inclines toward poverty. This third. And this text is one of the more principal ones.

Clement III.

It was for us (*And below:* [*cf. c.* 27, *On Simony,* V. 3.]) *Furthermore, you asked us whether someone becomes patron by the construction of a church alone, or whether he is to be admitted with the clerics to the election of a pleban, or altogether repelled from it, even if he has alleged that by long custom he ought to participate in the election.* To your inquiry we give this response: if anyone has constructed a church with the assent of the diocesan *bishop*, he thereby acquires the right of patronage. But in a conventual church the patron's assent is more properly requested not for an election of a prelate to be made, but for one already made, unless the *patron* otherwise obtains from his jurisdiction that he ought to interpose his part in the election to be considered. It is otherwise, however, in a chapel, in which one priest *to be instituted* is *sometimes* elected by the patron and presented to the bishop of the place in order to obtain institution. For the foundation of a church, the honor of procession is also reserved to the founder; and if he inclines toward poverty, he is modestly aided by the church, as is established in the sacred canons. [*As to the last, etc.* (*cf. c.* 27, *On Simony,* V. 3.) *Given at the Lateran, on the eighth day before the Ides of May.*]

Chapter XXVI

Latin source headnote: The patron of a vacant church, although he is a cleric, cannot present himself to it.

Innocent III, to the Archbishop of Rouen.

You petitioned to be instructed through our letters whether *some* cleric can present himself, if he is suitable, to a vacant church in which he holds the right of patronage. Therefore, since no one ought to intrude himself into offices of ecclesiastical prelacy, we respond *to your inquiry in this way*: no one can present himself to the parsonship of any church, however suitable he may be and by whatever

learning and merits he may be aided. [*Given at Rome, on the third day before the Ides of June, in the first year of our pontificate.* 1198.]

Chapter XXVII

Latin source headnote: If a question concerning the right of patronage among patrons is not definitively decided within four months, the bishop will order the church without prejudice to them.

The same, to the Bishop of Coventry.

Since prejudice *ought not be generated against churches through the disagreements of laymen, we consider it grave and unworthy that, as has been reported to our apostolate, by occasion of the disagreement that is litigated among them concerning the right of patronage, churches remain widowed of rectors longer than is due, which is known to redound to their grave detriment. But because, according to the Apostle, our daily burden is continual solicitude for all the churches, wishing by the debt of the pontifical office to confront those things we have premised,* we command your fraternity *through apostolic writings* that, if a question concerning the right of patronage has arisen among some persons and it has not been definitively decided within four months by the one to whom it belongs, from then onward, *appeal having been removed,* you are not to defer ordering that church with a suitable person, in such a way that no prejudice ought thereby to be generated in the future against the one who prevails in the right of patronage. [*Given at the Lateran, on the third day before the Ides of January.* 1199.]

Chapter XXVIII

Latin source headnote: A legate *a latere* can reserve to his own collation a church of which another church is patron, although it is not vacant, and confer it when it becomes vacant. This first. From two persons presented by a lay patron, the superior can institute the second. This second. And thus, as to its meaning, this text contains two different statements, although as to the letter both are intermingled.

The same, to the Archdeacon and Chancellor of Auxerre.

When our beloved son *Master Walter de Picerei on his own behalf, and Master Hugh de Feverniaco on behalf of the Dean of Alveoli, were litigating with one another concerning the church of Beauville, we granted to both as auditor our beloved son G., cardinal deacon of Santa Maria in Portico. In his presence the same master, by proposing, showed that,* when *formerly our venerable brother* the Bishop of Ostia, then legate of the Apostolic See *in the regions of Gaul, had marked William de Montibus with the clerical character, he commanded our beloved son* the Archdeacon of Chartres to reserve for his donation the first church that happened to become vacant in his archdeaconry, prohibiting him from conferring it upon anyone, since he had resolved to provide for the cleric G. from it; and when the church of Berovilla became vacant there, the same archdeacon, contrary to the mandate of that legate, presented the subdeacon G. to it. After his act was quashed by the same legate, the legate granted the church thus vacant to the aforesaid G., [*as is contained in his authentic instrument. To this afterward both our venerable brother ...., the bishop, and the said Archdeacon of Chartres, who was patron of the church, furnished assent, as their letters testify; and thus the aforesaid William held the church itself for almost four years and more, and was in no way drawn into a suit by the dean, who equally knew and saw this.*]

But when a certain prebend became vacant in the church of Saint Martin in the diocese of Chartres, the bishop took care to assign the said church to the cleric H. upon the archdeacon's presentation,

and the prebend to the aforesaid G. Hence H. himself petitioned [*humbly*] that the same church be confirmed to him, as one which he said he had obtained *canonically* [*without contradiction*] *and also* upon the presentation of the archdeacon, the true patron, [*and that perpetual silence concerning it be imposed upon his adversary. The proctor of the said dean, denying this, added that when, at the death of C., formerly Dean of Alveoli, the churches of Franconville and Beauville became vacant, ..., Archdeacon of Chartres, to whom their donation belonged, granted the church of Beauville to his brother G. and, by mandate of the diocesan bishop, corporally invested him with it, as is contained in the letters both of the bishop and also of the archdeacon. But after these things William de Montibus presented to the same archdeacon the letters of the aforesaid legate, in which it was contained that the same legate had retained for himself the donation of one church, whichever should first happen to become vacant in the archdeaconry of Chartres; and through this the same William petitioned that he either confer upon him the other of those churches or reserve it for the donation of the legate. He responded that he could fulfill neither, because he had already assigned both to others. But William himself, approaching the same legate a second time and falsely suggesting that the church of Beauville was vacant, obtained from him that he granted the said church to him in fact and commanded that he be instituted in it. Learning this, the same G., lest anyone disturb him in his possession, appealed to the Apostolic See and, coming personally to the Apostolic See, obtained that the cause itself be delegated to judges. When he afterward returned to his own region, the aforesaid William, distrusting his own justice, renounced in the hand of the said Bishop of Chartres whatever right, if any, he had obtained through the same legate in the aforesaid church. This having been done, the above-named archdeacon presented Master G. de Picerel to the same bishop and caused him, to the prejudice of the aforesaid absent G., to be invested with the aforesaid church. Learning this, the same G., in defense of his right, subjected both himself and that church to the protection of the Apostolic See and, not permitting himself to be cast from possession, appealed to our hearing, adding that all things were to remain in that condition in which they then were. And especially for this reason—namely, because the said archdeacon, by mandate of the Archbishop of Chartres, wished to induct the aforesaid master into corporal possession of the aforesaid church—he appealed to the hearing of the metropolitan; but the same archdeacon nevertheless, after an appeal of this kind, attempted to induct the master himself into possession of that church. Hence, when at the complaint of G. himself our venerable brother ...., Archbishop of Sens, ..., Subdean, and ...., Cantor of Chartres, had committed the same cause, the aforesaid master, cited by them and constituted in their presence, was unwilling to respond; but, immediately interposing an appeal to the Apostolic See, he withdrew from them contumaciously. Nevertheless, proceeding further, they received lawful witnesses against him, through whom it was shown clearly that, after the appeal interposed to the court of Sens, the same master was inducted into corporal possession of that church, as was read in the letters of the same judges. And thus the often-mentioned master, after his custodian had been driven from that church, was reasonably despoiled of it; the church was at length committed to the care of another who, not by authority of the said master but in the name of the aforesaid dean, celebrated in it and received its revenues. Hence, because the same G. said that he had obtained that church in this way, he petitioned that writings be sent to judges who would protect him from the undue molestation of the aforesaid master. But to the contrary the said master replied against him, saying that it was altogether false that the dean had been invested with that church upon the presentation of the true patron and by mandate of the bishop, especially since the bishop confessed in his letters that the same dean had been invested neither with the cure of that church nor with the church itself. Moreover, concerning what the opposing party said—that the aforesaid William, fearing the dean's return, had renounced his right in the hand of the Bishop of Chartres—the same master asserted that it was altogether a lie, since after his return he had possessed that church for three years and more without suit, while the dean himself saw and knew it. But the master himself was unwilling to deny this: namely, that his adversary had appealed to the court of Sens, while the master himself appealed to the Apostolic See and*

prohibited the dean from presuming to molest him concerning his right. Yet the dean, nevertheless approaching the aforesaid metropolitan, caused the master to be cited. Appearing before him on the appointed day, the master was unwilling to join issue but, renewing his appeal, withdrew. Yet the archbishop nevertheless, as the adversary also confessed, delegated the cause to judges after the appeal. Hence the same master said that, both through his own allegations and also through those things the opposing party had proposed, it was established that he himself had been despoiled after the appeal to the Apostolic See was interposed. Moreover, to what the adversary proposed—that after the dean's appeal to the Archbishop of Sens was interposed the same master had been inducted into possession of that church—the same master said that, if the dean had appealed lest the archdeacon fulfill the execution committed to him, an appeal of this kind was null, since appeal was not to be made from an executor where he was not attempting to exceed the limits of the mandate. He added furthermore that, since the same dean had no right in the church, it was not his concern to appeal; but if he had in any way been able to appeal, because the same master destroyed the appeal that he had interposed to the metropolitan by objecting that an appeal to the Apostolic See had been interposed, he ought not to have been despoiled in the meantime.]

To the contrary the dean's proctor responded that, although the said legate commanded that the first church to become vacant in the archdeaconry of Chartres be reserved for his own donation, nevertheless he could not by law do this concerning the aforesaid church, because such power did not belong to him, since presentation of a cleric to that church belonged to the same archdeacon not as a cleric but as though to a layman by reason of patronage, not by right of the archdeaconry. Hence, since the same archdeacon was in no way bound to observe his prohibition in this, he [*indeed*] *could by law present another to the same church, and his presentation, because it was made concerning a suitable person, ought to be judged firm,* [*because, even if it were true—which is nevertheless altogether false—that the right of presenting a cleric to that church belonged to the aforesaid archdeacon by reason not of the archidiaconal office but of temporal lordship, and that the legate's prohibition had no force in this respect, since he could not prohibit it to a lay patron, nevertheless for another reason he asserted that the archdeacon's presentation made concerning the aforesaid dean was void and empty: because, when he presented him, the archdeacon had already long before been suspended by our beloved son P., cardinal priest of the title of Saint Marcellus, then cardinal deacon of Santa Maria in Via Lata and legate of the Apostolic See; and that suspension lasted until after the return of the aforesaid Bishop of Ostia, through whose intervention the same archdeacon, constituted in our presence, merited to be absolved from the bond of suspension, as is proved through the letters of the same bishop. But the dean's proctor rejoined to the contrary that, although the archdeacon was held by the bond of suspension, nevertheless, as to a layman, the donation of that church could belong to him by right of patronage, of which he could not be deprived by any reason either through the legate's prohibition or through his suspension, especially since only the archidiaconal office had been interdicted to him.*]

We therefore, *after those and other things that were proposed before the same auditor and faithfully reported to us through him had been more diligently understood*, considering that, even if the aforesaid archdeacon had presented the aforesaid G. to that church as a layman, nevertheless, because *the dean himself* was not admitted by the diocesan bishop, but the said H., [*afterward*] presented by the same archdeacon, *was* instituted by the diocesan bishop, according to the statute of Pope Alexander *of good memory, our predecessor*, not the first but the second obtained right in the aforesaid church; and even if the *aforesaid* archdeacon presented the aforesaid G. as a cleric, since in what he did as a cleric he was subject to the legate's jurisdiction, whence, after the same legate had decreed that the donation of that church be reserved for himself, he could not present anyone to it as a cleric, we decree that his presentation made less canonically *was* void. And, notwithstanding it *entirely*, we pronounced that the grant of the same church made to the above-named H. had been canonical, *nevertheless quashing what was attempted*

through the delegates of the aforesaid Archbishop of Sens after an appeal was lawfully interposed to us, and adjudging to the same master the aforesaid church, together with the fruits received from it in the meantime, to be possessed fully and peacefully, imposing perpetual silence upon the aforesaid G. concerning this. [*Wherefore, to your discretion, etc. Given at Rome, on the ninth day before the Kalends of April, in the ninth year.* 1206.]

Chapter XXIX

Latin source headnote: If a lay patron successively presents two persons, the institution of the second is valid notwithstanding an appeal first made by the first; nevertheless, a bishop who maliciously rejected the first is compelled to provide for him in a suitable benefice. And in the final point it is a singular case.

The same, to the Bishop of Ely.

Of the pastoral office (*And below:* [*cf. c.* 28, *On the Office of a Delegated Judge,* I. 29.]) *But since it often happens that lay patrons of churches present now one person, now another, to vacant churches, solicitously* you petitioned to be instructed *through the Apostolic See* whether a cleric presented by a lay patron to some church, if the diocesan bishop has not considered that he should be admitted, obtains any right in it from a presentation of this kind; and, if perhaps he has appealed to the Apostolic See, and after the appeal interposed by him the same patron takes care to present another, and the bishop institutes the second person presented, whether the same person ought *deservedly* to be removed from that church. We therefore, adhering to the footsteps of Pope Alexander *of good memory, our predecessor, out of reverence for him*, who, distinguishing between persons presented by clerical and lay patrons, judged the condition of the possessor better among those presented by a layman, say that the institution of the person presented in the second place by a lay patron obtains the force of firmness. Nevertheless, we establish that a bishop who maliciously refused to admit a suitable person presented is to be compelled to provide for him in a suitable benefice, so that he may be punished in that respect in which there is no doubt that he offended against him. [*You asked, etc.* (*cf. c.* 19, *On Privileges,* V. 33.) *Given at Rome, at Saint Peter's, on the fourteenth day before the Kalends of January.* 1204.]

Chapter XXX

Latin source headnote: If someone has been ordained at the presentation of the rector to the title of a church, the patron who did not consent will be able to present to that church when it becomes vacant.

The same, to the Bishop of Orense.

You petitioned to be instructed through the Apostolic See whether, when rectors of parochial churches *sometimes* present certain persons to be ordained to the titles of their churches, the election of such persons belongs to the rectors themselves or also to the patrons; and, if the patrons' assent is not to be sought in these matters, whether their right of electing remains safe, so that, when those churches happen to become vacant, persons titled in this manner are not to be preferred to others. To this we respond briefly *to your fraternity* that through intitulation of this kind no prejudice is generated against patrons that would prevent them from presenting others to those churches when they become vacant, unless it proceeded from the patrons' assent. [*Given at the Lateran, on the second day before the Ides of February, in the eleventh year of our pontificate.* 1209.]

Chapter XXXI

Latin source headnote: Even a patron who is a cleric cannot confer a vacant church, and, if he conferred it, he can nevertheless present to it.

Gregory IX, to the Archbishop of York.

Your letters transmitted to us contained that, when the chapter of York had granted the vacant church of Gameforde, in which they hold the right of patronage, to the cleric R., they afterward presented the cleric L. to you for the same church after an appeal interposed by that R. to the Apostolic See. (*And below:*) We respond to your consultation in this way: since by force of the right of patronage not collation but presentation belongs to the patron, you will be able to institute in that church the person presented, provided no canonical impediment stands against him, as being the stronger.

Title XXXIX: On Censuses, Exactions, and Procurations

Chapter I

Latin source headnote: For the endowment of a church to be founded, one mansus, free from every temporal service, ought to be assigned; nevertheless it is bound to ecclesiastical service. But if anything beyond the mansus is conferred upon the church, the church is bound to pay the customary burdens from it. This it says by adhering to the letter.

From the Council at Worms.

It was sanctioned that one entire mansus without any service is to be assigned to each church. And the priests constituted in them are to render no service other than ecclesiastical service from the tithes, the offerings of the faithful, the houses, the yards or gardens situated next to the church, or the aforesaid mansus. And if they possess anything more, from it let them furnish the service owed to their lords.

Chapter II

Latin source headnote: Payment of tribute demonstrates subjection.

Augustine, on the Epistle to the Romans.

"Let every soul be subject to higher powers." (*And below:*) And you ought to be subject. For you furnish tribute for this reason, because this is proof of subjection.

Chapter III

Latin source headnote: A bishop cannot impose a new census upon a monastery.

Gregory, to Stephen the Cantor.

Knowing (*And below:*) The aforesaid abbot *also* asserted that the priest of the *aforesaid* Massa wished to impose new customs upon *that* monastery, *which have not existed up to this time during the three-year period since the monastery was founded,* [*since, if anything has been offered there to God by faithful men by grace of munificence, he asserts that he ought to receive a portion.*] We command that, if this did not exist from the

beginning, you are not to permit anything new to be imposed even as time passes, [*especially since it is of slight substance, etc.*]

Chapter IV

Latin source headnote: A blind and poor person is not bound to contribute to collections.

The same, to Bishop Constantine.

Although greatly (*And below:* [*cf. c.* 1, *On the Restitution of the Despoiled,* II. 13.]) The aforesaid blind man also said that he too is equally compelled to contribute to collections among the other *inhabitants of the city of Genoa*. [*And we marvel that one who is more worthy of mercy is burdened in your presence.*] You are not to permit this to be done, because it is exceedingly inhuman to afflict in a collection one whom his blindness burdens and upon whom, if there were [*great*] necessity, mercy ought to have been shown from the collections.

Chapter V

Latin source headnote: One seeking a census ought to state its basis.

Paschal II, to Countess Matilda.

It reached us *that the Abbot of Fraxinorensis despoiled the church of Carpi by occasion, namely, of a certain census, for what purpose it ought to be paid being unknown.* To your inquiry we respond in this way: a census of unknown purpose is found to be defined neither by divine nor by human laws; for it is necessary that it be known beforehand for what purpose and when every census ought to be paid. *We therefore command your belovedness to cause the plunder itself to be restored to the church of Carpi, and henceforth not to permit the Abbot of Fraxinorensis or anyone else to trouble it.*

Chapter VI

Latin source headnote: The council determines the number of mounts that visiting prelates can take with them, and prohibits them from then engaging in hunting and seeking costly banquets. This first, as far as the words "We also prohibit." — (*We prohibit, etc.:*) Prelates ought not burden subjects with tallages and exactions; nevertheless, for a just cause, they are permitted to seek moderate aid from them. This it says, as far as "Indeed." — (*Indeed, etc.:*) In effect it is said that the number of mounts established at the beginning of the chapter ought not be drawn upon to increase another number previously customary. The Abbot.

From the Lateran Council.

Since the Apostle determined that he and his companions were to be maintained by their own hands so that he might remove an opportunity for preaching from false apostles and not be burdensome to those to whom he preached, it is known to be exceedingly grave *and worthy of correction* that certain prelates are so burdensome to *their subjects* in procurations that, *for a cause of this kind,* the subjects are sometimes compelled to expose ecclesiastical ornaments, and a brief hour consumes the sustenance of a long time. Therefore we establish that archbishops visiting parishes are never to exceed, according to the diversity of the provinces and the means of the churches, the number of forty or fifty mounts; bishops, however, twenty or thirty; cardinals, *however*, twenty-five; archdeacons, five or seven; and deans constituted under bishops are to be content with two horses. Nor are they to travel

with hunting dogs and birds, but are so to proceed that they appear to seek not the things that are their own but those of Jesus Christ. Nor are they to seek costly banquets, but with thanksgiving receive what has been ministered to them honorably and suitably.

We also prohibit bishops from presuming to burden their subjects with tallages and exactions. Yet for the many necessities that sometimes supervene, we tolerate that, if a manifest and reasonable cause exists, they may be able with charity to petition moderate aid from them. For since the Apostle says, "Children ought not lay up treasure for parents, but parents for children," it appears very far from paternal piety if superiors are burdensome to their subjects, whom they ought to cherish after the manner of a shepherd in all necessities. But archdeacons or deans are to presume to exercise no exactions or tallages against priests or clerics.

Indeed, what has been said by way of toleration concerning the aforesaid number of mounts can be observed in those places in which revenues and ecclesiastical means are more ample. But in poorer places we will such a measure to be kept that lesser persons do not deservedly grieve that they are burdened by the arrival of greater persons. Nor, under such an indulgence, are those who have hitherto been accustomed to use fewer horses to believe that the power of using more has been granted to them.

Chapter VII

Latin source headnote: A new census cannot be imposed upon churches, nor can an old one be increased. This it says, and it is one of the more principal chapters of this title.

From the same council.

We prohibit furthermore that new censuses be imposed upon churches by abbots, bishops, or other prelates, that old ones be increased, or that they presume to appropriate a part of the revenues to their own uses; rather, let superiors preserve with good will for their inferiors also the liberty that they desire to preserve for themselves. But if anyone acts otherwise, let what he did be held void.

Chapter VIII

Latin source headnote: A prelate or rector of a church cannot, especially after death, make his church subject to a census by his own authority.

Alexander III, to the Bishop of Worcester.

Furthermore, concerning those who, without the bishop's knowledge, by their own authority have paid or received an annual pension from churches by a certain subterfuge: after their deaths they are in no way to be heard in the receipt of the pension, *unless they received from those who, through the bishop or his officials, have authority to institute persons having the right to receive the canon, especially* if it is established that the authority and assent of the pontiff or of another who could do this by law did not intervene concerning it. For simple priests or clerics cannot by their own authority make the churches over which they preside subject to census, especially after their own death.

Chapter IX

Latin source headnote: It is brief, or in other words is summarized thus: A bishop cannot on this account impose a census upon a church wrested by him from the hand of a layman.

The same, to the Bishop of Chartres.

But upon churches that bishops newly wrest from the hands of laymen, beyond the cathedraticum and all the rights that are imposed upon other churches, we prohibit an exaction from being imposed, *since by our decree we generally prohibit churches henceforth from being burdened by new exactions*. [*To these things, etc.; cf. c.* 8, *On Testaments,* III. 26.]

Chapter X

Latin source headnote: One who imposes new tolls without the prince's consent is deprived of communion.

The same.

We renew (*And below:* [*cf. c.* 2, *On Truce,* I. 34.]) Nor may anyone presume in any way to establish new exactions of tolls against another without the authority and consent of kings and princes, [*or to retain those established, or to increase old ones*.] But if anyone acts contrary to this and does not desist after being admonished, let him lack Christian communion until he makes satisfaction.

Chapter XI

Latin source headnote: One who through collusion makes a church subject to census will be deprived of it.

The same, to the Archbishop of Canterbury and His Suffragans.

When clerics (*And below:* [*cf. c.* 6, *On Agreements,* I. 35.]) To this, because there *are* certain clerics *who*, after collusion has been made with religious *men*, without the authority of the diocesan bishop make the churches that they hold subject to a census in their favor, so that after their deaths the same churches may, through the presentation of the same religious *men*, be transferred to the sons or nephews of those clerics, we command you *by authority of the presents* that, if any *of your clerics* are found to do such things, appeal having been postponed, you are not to defer removing them *by apostolic authority* from the aforesaid churches, *lest they appear to carry away fruit from their fraud or deceit*.

Chapter XII

Latin source headnote: If collectors burden churches, they ought to be deprived of office.

The same.

Those things that from avarice (*And below:* [*cf. c.* 16, *On Simony,* V. 3.]) *Nevertheless, we also* enjoin [*you*] *by authority of the presents that, when you visit the churches themselves, you exercise the office of visitation according to what the canons command and not burden the churches by your visitation, so that you may appear to visit them more with a view to instruction and correction than with a desire for feasting*. But when you make a collection of denarii throughout your archdeaconries on account of the visitation of blessed Peter, do not burden the *aforesaid* churches or parishes *in making the collection otherwise or more than your predecessors are known to have done in the time of the Roman Pontiffs Innocent and Eugenius of holy memory*. But if you presume otherwise, that which you appear to possess will be taken from you.

Chapter XIII

Latin source headnote: One who receives an oath to pay a new census imposed upon a church is compelled to absolve the person swearing.

Lucius III.

T., rector of the church of Fulsig., signified to us that, when he had been elected to the governance of that church by our *beloved sons*, the [*same*] *abbot and* monks of Castig., he *corporally* furnished an oath to pay them an annual census of three marks, which his predecessor had paid. Afterward the diocesan bishop, *our venerable brother R., Bishop of Worcester*, prohibited him, at peril to his order *and under threat of anathema*, from paying that census to the monks unless it were first established that it had been imposed by episcopal authority. *Hence the aforesaid rector fears on this side the guilt of perjury and on that side fears the imminent peril of disobedience.* Therefore we command *your fraternity through apostolic writings* that, *the parties having been summoned before you*, if it is established that the aforesaid census was imposed by authority *of* the prelate and not newly, you are to command the bishop *by our authority* to relax *his* prohibition without delay. But if the census was newly imposed, whether this was done [*by*] authority of the bishop or not, appeal having been removed, compel the same monks *by ecclesiastical constraint* to absolve the cleric from the oath. *For we* [*do not will*] *nor ought we permit churches to be vexed by the exaction of a new census.*

Chapter XIV

Latin source headnote: An archbishop visiting his province ought to be furnished a procuration even by the monasteries of the province.

The same, to the Archbishop of Ravenna.

Questions settled *by the judgment of the Apostolic See are committed to writing for perpetual memory, lest through forgetfulness they be able to be raised over the course of time. Moreover, so that a sentence may have greater firmness, it is strengthened by the protection of an apostolic writing.* Indeed, when a controversy was being litigated between you and the monasteries of Bologna, *of both monks and nuns*, concerning the procurations that you had exacted from them, *we committed the cause to our venerable brother H., Bishop of Albano, to be heard. But afterward our beloved son* the Abbot of Saint Proculus, proctor of all the others, as appeared from the letters that he carried, *and as he himself affirmed by giving faith in the hand of the aforesaid bishop, litigated at length before us and our brothers on behalf of all the other monks, except those of Saint Damian and Saint Bartholomew, who were in no way referring the question concerning this. But he exhibited no privileges of the Roman Church or of Ravenna on his side, nor showed that he was fortified by long custom.* But you, *firmly* asserting that those procurations were furnished to you without contradiction in the other monasteries of your province, proved through suitable witnesses that they were furnished to your predecessors in the monasteries of Bologna. Hence, indeed, *after deliberation was held with our brothers*, we saw that your intention was aided by common law and the custom of your predecessors. On this account, *assenting to your just petitions, with the common consent of our brothers* we condemned the aforesaid monasteries to furnish a procuration to you and your successors according to their means.

Chapter XV

Latin source headnote: Patrons, even clerical patrons, cannot impose a new census upon a church or increase an old one; and if they exacted oaths or securities concerning this, they are compelled to

absolve them.

Clement III.

A very grave complaint, *and one most worthy of correction, was recently proposed in our hearing, which with a safe conscience we cannot pass over under dissimulation.* When churches happen to become vacant, ecclesiastical persons are unwilling to call anyone to their governance otherwise than by imposing a new census upon those churches or increasing an old one contrary to the constitution of the Lateran Council, compelling the priest to be instituted to its payment by an *occasional* caution through oath or surety; *they also strive to apply a certain part of the revenues to their own uses. Hence it often happens that, while the diocesan bishop is ignorant of excesses of this kind, or while he is in no way consulted, they introduce priests into those churches according to the judgment of their own will. Therefore, because we neither will nor ought to permit the constitutions of the aforesaid council to be violated by the injury of any persons,* we command *and enjoin* your discretion *through apostolic writings* that, *when you have been requested concerning this, the parties having been summoned into your presence,* revoking as void, *contradiction and appeal ceasing,* whatever is established to have been attempted *by any persons* contrary to the aforesaid constitution concerning *those* churches or their census from the time of that constitution, *you are entirely to absolve the churches from the increase of censuses and reduce them to their due condition, and* cause the priests whom you know to have furnished unlawful oaths concerning these things to be absolved after suitable satisfaction has been imposed, *also* canonically punishing those who henceforth presume to act contrary to the form of the canons concerning these things, *without preference for any person, the obstacle of appeal having been removed.*

Chapter XVI

Latin source headnote: One who is bound to furnish a procuration to the brothers of some house is obligated to furnish a procuration to all, although their number has now grown; but if he were thereby burdened excessively, provision will be made for him through the office of the judge. This it says according to the more common reading.

Innocent III, to the Abbot and Convent of Bellevaux.

The more devoutly you are bound *under the religious habit to serve your Creator, the more solicitously it befits us to provide that the advancement of the monastic order cannot in any way be impeded in you through the weight of an immoderate burden.* We learned, *as you signified to us,* that from the very beginning *of the foundation* of your house it proceeded from the founder's will that it should liberally furnish one procuration each year to the brothers of Saint Irenaeus, although you hold nothing from them on account of which a procuration of this kind ought to be furnished to them. But at that *time,* because of the small number of brothers and servants, such a procuration did not burden *your house, since it did not exceed the limits of light expenses.* But now their number has increased so greatly that scarcely four marks of silver would *now* suffice for *furnishing* the procuration, which used to be furnished *sufficiently* for one. We therefore grant, *so that through the care of apostolic solicitude provision may be made in this matter for your burdens, by authority of the presents,* that you are not henceforth to be obligated to the aforesaid brothers beyond the first measure in that procuration, but let them be content with *those* expenses that used to suffice, unless *perhaps* the means of the church have increased so much that, without burden, when the number of brothers has been increased, the amount of expenses can be extended to discharge the debt of procuration. [*Given at Rome, at Saint Peter's, on the Nones of May, in the first year of our pontificate.* 1198.]

Chapter XVII

Latin source headnote: All churches, except those exempt from this by an apostolic privilege, are bound to furnish procurations to legates of the Apostolic See or even its messengers, nor are they aided by prescription in this. This it says as far as "Indeed." — (*Indeed, etc.*) It treats of the manner of furnishing procurations to the legates and messengers themselves. The Abbot.

The same, to the Primicerius and Clergy of Milan.

Since our daily burden *according to the debt of apostolic service is continual solicitude for all the churches, whenever we cannot personally attend to advancing their affairs, we are compelled to dispatch them through our brothers whom we send from our side, following in this matter the example of him who, after his disciples had been sent into the whole world, himself personally wrought salvation in the midst of the earth. Hence it is that, when we recently held that our beloved son B., cardinal of the title of Saint Peter in Chains and legate of the Apostolic See, should be sent to Lombardy for the affairs of the church, and he, entering your city, exacted procurations* [*from you*] *that were accustomed to be furnished to legates and messengers of the Apostolic See, you, not attending to what is said by the Apostle, "If we have sown spiritual things for you, it is no great thing if we reap your carnal things," appealed to the Apostolic See lest he bind you to the burden of procuration unless he first caused himself to be furnished a procuration by the canons of the greater church; and, as the same cardinal intimated to us through his letters, you were not a little injurious in other matters also. On this account our beloved sons the Provost of Saint Nazarius and A., canon of Saint Stephen, your syndics and proctors, coming to the Apostolic See with our beloved son the Abbot of Saint Vincent, petitioned suppliantly on your behalf that we establish an order and measure concerning these things. Although, because, contumaciously resisting the aforesaid cardinal—or rather us in him—you denied necessities according to the word of the Lord, "He who receives you receives me, and he who rejects you rejects me," you deserved to be heard not for yourselves but rather against yourselves, nevertheless, because we cannot, even when offended, put aside the paternal affection by which it is proper for us always to pity and spare through the clemency of the Roman See, with the counsel of our brothers* we respond to your petition *in matters of this kind* in this way: since all churches are bound to furnish procurations to legates and messengers of the Apostolic See, we will that no church *at all* be excused from furnishing them unless perhaps it is exempt by special privilege of the Apostolic See, which we do not believe, even if for a very long time it has not furnished the service of procuration, since prescription cannot vindicate a place for itself in such things, because we never cease altogether from the provision of pastoral solicitude concerning all churches.

Indeed, in exacting these things we will such manner and order to be observed that no church or prelate may reasonably complain of being unduly burdened. But if you determine that the expenses of our legates and messengers are to be made from a common collection—which we have not considered should be prohibited to you—we will that from this no prejudice be generated against us or ours that would prevent them from petitioning from whomever they prefer the procurations owed to them, in such a way that, if the person from whom it is exacted has been burdened beyond his means, it is to be restored to him by the others. Nevertheless, whoever is requested is to obey our messengers in furnishing necessary expenses *humbly and devoutly*, yet *in such a way* that nothing at all is attempted fraudulently and they are not compelled, if they are unwilling, to receive the service of procuration through common ministers. But those who decide to resist them contumaciously are to be compelled by ecclesiastical constraint, *every appeal having been entirely removed*. [*But concerning the injuries, etc. Given at the Lateran, on the twelfth day before the Kalends of March.* 1199.]

Chapter XVIII

Latin source headnote: If what is owed from a vow is customarily paid according to a single measure, it will have to be paid according to that measure in the future; but if according to different measures, the person paying will be discharged even according to the smaller.

The same, to the Bishops of Zamora and Salamanca.

It was proposed *before us* on the part of *our venerable brother* the Archbishop of Compostela that, although those who continuously paid the vows of blessed James have hitherto paid and do pay them according to the common measure of their land, with which, namely, they buy and sell, certain persons, because in times long *past* they ceased from paying them, now, *having been compelled through you by authority of the Apostolic See to pay them*, exhibit a certain very small and unknown measure, *not even deputed to common uses, and endeavor to pay the aforesaid vows according to it. Hence you petitioned us to deign to render you certain concerning this: whether those who exhibit the unknown measure are to be compelled to pay the aforesaid vows according to the common measure of their land, in accordance with what those who paid them continuously did.* Therefore, since it is not established according to what measure their predecessors paid the aforesaid vows, we believe a distinction is to be made: whether the inhabitants of that region who paid them continuously paid vows of this kind according to one and the same measure, or according to varied and different ones. For in the first case those persons also are to be compelled to pay according to the same measure. In the second, those wishing to pay according to the smaller are certainly *not* to be compelled to pay according to the greater, because, since vows of this kind were gratuitous from the beginning, they are to be exacted more benignly by ecclesiastical men, lest they appear as exactors to gape excessively after temporal gains. [*Given at Rome, at Saint Peter's, on the tenth day before the Kalends of April, in the ninth year.* 1206.]

Chapter XIX

Latin source headnote: Churches are bound to answer to the bishop in whose diocese they are concerning procurations, the fourth of tithes, and other episcopal rights. This it says with regard to the title.

The same, to the Bishop of Zaragoza.

When formerly [*you had sent your complaint to our ears that our beloved son the Abbot of San Juan de la Peña was defrauding you in many ways of the fourths of the tithes that you ought to receive in the churches of Luna and Taust., we held that the cause itself should be committed to our beloved sons ...., Provost of Jaca, and P.. of Montearagón, Archdeacon of Tarazona. In their presence your party petitioned that the abbot pay you without diminution a fourth of all tithes, which you were accustomed to receive in the aforesaid churches. Against this it was responded on behalf of the abbot that, since the aforesaid churches pertain to the monastery by full right, you could vindicate no right in them. But on your part it was proposed to the contrary that both the fourth of the tithe and other episcopal rights pertained to you in many ways in the aforesaid churches, since, indeed, because those churches are constituted in your diocese, by common law you can seek in them both the fourth of the tithe and other episcopal rights. You also proposed a composition entered into between your church and the monastery of Peña through the mediation of B., Archbishop of Tarragona of good memory, and R., Count of Barcelona, through which you affirmed that both a supper and the fourth of the tithe and other episcopal rights belonged to you in those churches. To prove this you presented

an authentic instrument, asserting that the same composition was confirmed by authority of Pope Alexander III of good memory, our predecessor, as is perceived to be contained in his authentic instrument. You likewise firmly introduced another composition entered into through the mediation of G., Bishop of Pamplona of good memory, and our beloved sons F. de Otiien and D., monk of Saint John, through which you asserted that the fourth was owed to you, exhibiting a public instrument concerning it. Also, to strengthen your intention more forcefully, you alleged a prescription of forty years, asserting that, even if you had no other aids of defense, a right of receiving the fourth of the often-mentioned tithe had been acquired for you through a span of long time.

But on the abbot's part it was responded to these things that the aforesaid churches pertain by full right, according to common law, to the monastery of Peña; since King Sancho of Aragon of illustrious memory merited to obtain an indulgence from the Apostolic See that, if it happened that any places in his kingdom were newly populated or liberated from the hands of the Saracens, he might freely grant the churches to be constructed in them to whomever he wished. And when he had afterward brought inhabitants into the castle of Luna, he conferred upon the monastery of Peña the churches of Luna and Taust. constructed there; to prove these things, the abbot produced instruments drawn up concerning the aforesaid donations. Peter, Bishop of Pamplona of good memory, in whose diocese the aforesaid churches were said to be constituted, also granted them to the aforesaid monastery with tithes and other episcopal rights, as is contained in the authentic instrument of the same bishop; and to prove this the aforesaid abbot introduced witnesses that those churches are constituted in the diocese of Pamplona. The same abbot also proposed that García of good memory, your predecessor, granted those churches to his monastery with every episcopal right except the consecrations of basilicas and certain other things that are more fully contained in the authentic instrument drawn up thereupon, on account of which the abbot himself responded that by law you could seek nothing in the aforesaid churches.

Furthermore, the monastery's party proposed that both the first and the second composition proposed on your part were to be rejected for this reason: because each composition was violently extorted through coercion and fear of a secular prince, which it endeavored to show through the depositions of witnesses. It nevertheless alleged that the confirmation obtained concerning so unlawful a composition could not bring you the benefit of defense, since through confirmation a right is by no means acquired, but one already acquired is preserved more securely. Against the forty-year prescription that you took care to allege, the monastery's party responded that a prescription of this kind, even if it had been proved, was shown by this to have been interrupted many times: because, on account of the frequent controversies arising concerning those churches, it is proved that two compositions were interposed within periods of forty years. Furthermore, since according to the canonical sanctions the periods of one who unlawfully transacts or alienates ought to be deducted from prescription, it is established that the forty-year prescription was in no way completed if the periods during which the abbot who unlawfully transacted afterward lived are subtracted.

To these things it was firmly replied on your part that the aforesaid indulgence alleged to have been granted to King Sancho was never presented in the judgment; but even if it had been exhibited or most certain proof of it had been made, it could generate no prejudice against you, since the abbot himself had confessed at law before us that the same indulgence was granted to the aforesaid king saving episcopal right, and he asserted that he had confessed this same thing before the delegated

judges. Moreover, your party proposed steadfastly that the donation of the Bishop of Pamplona could not prejudice you, since it was not sufficiently shown through witnesses that the aforesaid churches were constituted in his diocese. Against the donation of your predecessor it was responded on your part that, since the abbot, interrogated at law, responded that the same predecessor had not had power to confer those spiritual things, it is unworthy that he obtain an advantage by occasion of the instrument that he did not blush to impugn in the judgment; especially since it was in no way established that it was authentic, and most especially since, after that donation is proposed to have been made, it is certain that for those churches the monastery itself answered to your church for many periods of time in tithes and other episcopal rights. But also concerning the fear through which the above-named compositions are proposed to have been interposed, your party proposed that the abbot himself was in no way to be heard. For even if it were established that fear was applied at the time of the composition, nevertheless, because spontaneous and free payment of both the tithe and the other episcopal rights afterward followed, the same abbot could not reasonably excuse himself under pretext of coercion.*]

After these and other things that were proposed before the aforesaid judges and before us had been more fully understood, because *full* proof was made for us that the churches of Luna and Bes. are constituted in your diocese—not only through other things, but even through this very thing, which is contained expressly in the instruments of the compositions: that the Abbot of San Juan de la Peña ought to answer to you both concerning the fourth of the tithes, *concerning which alone he asserted that violence had been done,* and concerning the other episcopal *rights,* [*concerning which he did not complain that any violence had been inflicted upon him*]*—with the counsel of our brothers,* we condemn the abbot himself to full payment of the fourth of all tithes, no deductions having been made, and to the furnishing of procurations and of other episcopal rights in the aforesaid churches. For although according to the form of the second composition some deductions were to be made, nevertheless, because the same abbot in no way approved *that* composition but endeavored to impugn it in many ways, he ought not to obtain a benefit from that which he appeared tacitly to have renounced. It was furthermore discordant for him to deny that the church was constituted in your diocese concerning which he showed at law that the instruments of your predecessor had granted it to *his* monastery, through which he expressly sought episcopal right. [*Given at Ferentino, on the second day before the Nones of August, in the ninth year.* 1206.]

Chapter XX

Latin source headnote: Censuses are to be paid in the old coinage in which they were instituted, unless payment in another coinage has been prescribed. This it says; it is a notable and very frequently allegeable case.

The same, to the Bishop of Spoleto.

Formerly we committed to *our venerable brother* the Bishop of Todi and his colleagues for determination the cause that you proposed against the clerics of the parish of Rupina concerning the synodaticum. Before them it was proposed on your part that, although the same clerics *formerly* paid your predecessors three Pavia denarii on the feast of the Nativity and three on the feast of the Lord's Resurrection for the synodaticum, they now paid only three Lucca denarii for each Pavia denarius, although one Pavia denarius is worth six Lucca denarii. Hence you petitioned that they be compelled

to payment in Pavia denarii, *by our authority, namely, for this*, since, although you received *those* Lucca denarii in the first year, you nevertheless always thereafter protested your right. *But the party of the clerics proposed to the contrary that, although Pavia denarii had at one time been paid to your predecessors for the synodaticum, for forty-five years and less they had paid Lucca denarii both to you and to others, and thus they endeavored to protect their party by prescription.* (*And below:*) *We therefore granted to James, your proctor, and John the priest, proctor of the opposing party, our beloved son P., cardinal priest of the Basilica of the Twelve Apostles, as auditor. When they were unwilling or unable to propose anything new before him, because renunciation had been made on both sides, and when he had reported all the proceedings in our presence and that of our brothers, we understood that it had been proved through your witnesses that in the time of Lothair of good memory, your predecessor, and also after his death, Pavia denarii had been paid for the synodaticum, and that thereafter three Lucca denarii, two of which were worth five of those now in use, had been furnished for some time. And because a period of thirty-three or thirty-four or thirty-five years has elapsed since the time of Lothair, we also inspected the statements of the opposing party's witnesses, through whom it wished to prove that for forty years and less three Lucca denarii or three medaliae had been paid as synodaticum for each Pavia denarius, although Pavia denarii had been paid previously. The advocate of that party had also confessed at law—and his confession was reduced to writing and was neither corrected nor revoked by the aforesaid clerics—that the same clerics, in the times of Henry and Lothair, your predecessors, paid three Pavia denarii as synodaticum twice a year, and thereafter three Lucca denarii for each Pavia denarius*. Since, therefore, it is established *for us fully through the witnesses of both parties* that Pavia denarii were formerly paid for the synodaticum—which also follows from the fact that Lucca denarii were afterward paid in their place—since from the statements of *your* witnesses and the confession of the other party's advocate, not afterward revoked, it appears clearly that in the time of L., your predecessor, Pavia coinage was paid for the synodaticum; *since it is held from the attestations of both parties that* no more than thirty-six years have elapsed since the time of the said L.; and since *through your witnesses* it has been lawfully proved that the three Lucca denarii that were paid for one Pavia denarius after the death of L. were worth five or six of those now in use: understanding from this that through debasement of the coinage it happened that Lucca denarii, as they were in use, were given for the synodaticum down to your time, *with the counsel of our brothers*, by definitive sentence we condemn the proctor of the opposing party, in the name of the clerics of the aforesaid parish, to pay you Pavia denarii or their value for the synodaticum.

Chapter XXI

Latin source headnote: A bishop who remits to a church the services that it owed him and establishes that another service is not to be imposed is not understood to have remitted a procuration.

The same, to the Prior of Saint Stephen.

When our venerable brother [*M.*], Bishop of Fano, *and you were constituted in our presence and wished to litigate with one another concerning the question that was being litigated between you over the church of Saint Stephen of Fano, we granted you as auditors our beloved sons John, cardinal priest of the title of Saint Prisca, and John, cardinal deacon of Santa Maria in Cosmedin. Before them you took care to allege in opposition that, when the aforesaid church of Saint Stephen had been reduced almost to desolation through the malice of certain nuns who appeared to dwell in it under the religious habit, C., Bishop of Fano of good memory, by authority of Pope Eugenius of happy memory, our predecessor, removed them from the aforesaid church and instituted canons regular in it, establishing that the canonical order ought to be observed there in perpetuity; and he entirely absolved it from every*

exaction both of himself and of his successors and of the church of Fano, reserving to himself and his church one candle of three pounds to be paid by it each year. [*And because the aforesaid bishop burdened you in many ways concerning the aforesaid liberty, which was confirmed both by Pope Celestine of happy memory, our predecessor, and also by us, you petitioned that apostolic protection assist you. But the aforesaid bishop proposed to the contrary that the privilege of his aforesaid predecessor inflicted no prejudice upon himself and his church, because at the time when he granted it to the aforesaid church he had renounced the episcopate and had received the regular habit in that church, and, repenting after three days, revoked that privilege. Furthermore, you and the canons of that church did not use that privilege, but, just as before the privilege was granted, so also afterward, you took care to furnish all services without any difficulty to all the successors of that bishop, and especially to himself, in hospitality down to the present time. He asserted that the confirmation of our aforesaid predecessor had been elicited by surreption and concealed until now; on account of which, if perhaps the church of Fano had been injured in any respect, he humbly petitioned that restitution be made to it. But you took care to respond to the proposals in this way: that the privilege itself was valid by law, because the bishop, when he granted it, had neither resigned the episcopate nor received the regular habit, and had granted it by the will of his canons, as would appear clearly from the same instrument, in which the names of the canons of the church of Fano are subscribed, and which was given in the palace of Fano, as is expressly contained in it.*] *But when the said cardinals had faithfully reported to us the things they had heard, and the said instrument had been diligently inspected, in truth* we recognized that the aforesaid bishop remitted to the aforesaid church the spallae that both he and his predecessors had been accustomed to receive from that church, and established that he would not impose another service upon it, reserving to himself and his church annually, under the name of a pension, a candle of three pounds. Therefore, because a procuration is annexed to visitation, *since no one ought to serve as a soldier at his own expense, nor ought the mouth of the ox that treads out grain to be muzzled*, and because the bishop, by reason of the episcopal jurisdiction that he has in it, is bound to visit the aforesaid church for the sake of correction, and that which was imposed by common law from the foundation itself is not understood to be imposed as something new, *with the counsel of our brothers* we decree that the same bishop, when he approaches that church for the sake of correction, is to receive a moderate procuration from it twice a year; but *the same bishop* is to presume to exact or extort nothing else from that church beyond the aforesaid pension and procurations. [*We therefore decree, etc. Given at Anagni, on the fifth day before the Kalends of March.* 1204.]

Chapter XXII

Latin source headnote: Churches newly converted will observe the custom of neighboring churches in procurations and other matters.

The same, to the Archbishop of Compostela.

Concerning that on which your fraternity wished to consult us—namely, because almost the whole province of Compostela has newly been converted to the jurisdiction of your church, in what manner it ought to obey and serve you when visiting the province or part of the province, and also to provide procurations, and that *we deign to instruct you*—we have considered that this response should be given to you *in this way*: it is bound to observe that which is observed in the neighboring provinces. [*Given at Viterbo, on the tenth day before the Kalends of July, in the tenth year.* 1207.]

Chapter XXIII

Latin source headnote: Prelates are to be furnished procurations when they visit personally, and they ought then to observe the Lateran Council and devote themselves to preaching, correction, and reformation. Apostolic legates and messengers ought to be furnished procurations only for those days during which they make a stay, and what is exacted contrary to this constitution is restored twofold.

The same, in the general council.

Procurations that are owed by reason of visitation to bishops, archdeacons, or any others, including legates or messengers of the Apostolic See, are in no way to be exacted without manifest and necessary cause except when they personally perform the office of visitation. And then let them observe the moderation of mounts and persons defined in the Lateran Council, with this qualification applied concerning legates and messengers of the Apostolic See: when it is necessary for them to make a necessary stay at some place, lest that place be burdened excessively on their account, let them receive moderate procurations from other churches or persons that have not yet been burdened by their procurations, in such a way that the number of procurations does not exceed the number of days during which they make a stay of this kind; and when one has not sufficed by itself, let two or more be joined into one. Moreover, let those exercising the office of visitation seek not the things that are their own but those of Jesus Christ, devoting themselves to preaching and exhortation, correction and reformation, so that they may bear fruit that does not perish. But whoever attempts to act contrary to this is both to return what he received and to furnish as much again to the church that he burdened in this way.

Chapter XXIV

Latin source headnote: A church, even one situated in a city, is bound to furnish a procuration to a visiting bishop, although it has never furnished him one.

Honorius III, to the Abbots of Tiron and Josaphat.

We received the complaint of our venerable brother the Bishop of Le Mans that, although the cause known to be litigated between him on one side and the abbot and convent of La Couture *in the diocese of Le Mans* on the other, concerning the procurations that the same bishop seeks from them *both in the head and in the members*, was committed to you by the Apostolic See *with the consent of the parties*, the said abbot and convent endeavor to frustrate the intention of the same bishop on the ground that their monastery is known to be situated in the city of Le Mans and that they have not hitherto paid a procuration, *although they show no privilege of exemption and common right belongs to the same bishop. Wishing, therefore, that an end be imposed upon the lawsuits*, we command your discretion that, unless *the said abbot and convent* show something else reasonable *and prove why they ought not to furnish the aforesaid things to the bishop himself*, you are to compel them to furnish it as right shall dictate, *according to the tenor of the former apostolic letters, reason having been considered*.

Chapter XXV

Latin source headnote: One who visits a province by metropolitan right or by right of legation can pronounce a sentence against provincials who deny him procurations.

Gregory IX.

When recently the Archbishop of Benevento was visiting the province of Benevento (*And below:*), we command that, when it happens that the same archbishop visits the province of Benevento either by his own authority or by ours, you furnish him the procurations owed by reason of visitation according to the means of your churches. Otherwise, we will hold ratified the sentence that he lawfully pronounces against the rebellious and, with the Lord as author, will cause it to be inviolably observed.

Chapter XXVI

Latin source headnote: Old pensions are to be paid in the old coinage or, if it is not in use, at its value.

The same.

Since for some years you have paid to the canons of the greater church a certain sum of money owed as a pension of your church, and the same persons exact that the entire sum be paid to them in better coinage, through our letters we command you to cause those canons to remain content with payment of the former money or, if it is not in use, with the value of the old pension.

Chapter XXVII

Latin source headnote: A procuration by reason of visitation is not owed on account of a private oratory.

The same.

By authority of the presents we prohibit anyone from presuming to exact or extort from you the procurations that are owed by reason of visitation on the ground that some of you sometimes celebrate in the oratories that you have in your granges.

Title XL: On the Consecration of a Church or Altar

Chapter I

Latin source headnote: When the altar or the stone containing the seal has been removed, the altar, but not the church, will be reconsecrated.

Alexander III.

To these things, if the altar has been moved, or only that stone placed upon it that contains the seal has been broken or even *diminished*, it ought to be consecrated anew. But on account of this the church is by no means accustomed to repeat its consecration, although certain canons appear to intimate it. *Nevertheless, it is not prohibited from doing so.*

Chapter II

Latin source headnote: Churches can be consecrated even on non-feast days.

Innocent III, to the Bishop of Tournai.

Your fraternity *caused us to be asked whether it was lawful for you to celebrate dedications of churches on both Sundays and ordinary days; concerning which* we respond to your inquiry in this way: in your diocese it is

lawful for you to impart dedication to churches on both Sundays and ordinary days. [*Given at Rome, on the seventh day before the Ides of February, in the seventh year.* 1205.]

Chapter III

Latin source headnote: It contains two statements, and first it says the same as the preceding chapter in this title. The second statement says that unconsecrated oil can be mixed with consecrated oil, and the whole becomes consecrated.

The same, to the Bishop of Nidaros.

That in doubtful matters (*And below:* [*cf. c.* 30, *On the Sentence of Excommunication,* V. 39.]) But an altar on which the slab to which the blessing of consecration is applied by pontifical ministry has been moved or enormously broken ought not undeservedly to be consecrated. Nor do we deny that unconsecrated oil can be mixed with consecrated oil. [*But the clerics, etc. Given near Civita Castellana, on the sixth day before the Ides of October.* 1198.]

Chapter IV

Latin source headnote: A church polluted by homicides and wounds inflicted upon persons there is reconciled.

The same, to the Archbishop of Compostela.

You proposed, *while constituted in our presence,* that when pilgrims from diverse regions come to the church of Saint James, and some wish to vindicate against others through contentions and quarrels the keeping of the altar at night, homicides sometimes happen and wounds are sometimes inflicted; *on account of which you humbly petitioned that we deign to provide for that church by another manner than through the benefit of reconsecration.* We respond to your fraternity in this way: while the church and altar remain, it can be reconciled through water blessed with wine and ashes. [*Given at Viterbo, on the twelfth day before the Kalends of July, in the tenth year.* 1207.]

Chapter V

Latin source headnote: Several altars can be consecrated simultaneously in the same church; and the same applies to several bishops.

The same.

Since you are (*And below:* [*cf. c.* 6, *On the Use and Authority of the Pallium,* I. 8.]) You should therefore know that, *where necessity demands, both* several altars in one church and several bishops simultaneously you will be able to consecrate.

Chapter VI

Latin source headnote: When the roof has fallen while the walls remain unharmed, and the altar-table has not been enormously broken, neither the altar nor the church is consecrated anew.

The same.

After the wooden structures of your church were consumed by a *certain fire* that occurred, although the walls remained unharmed and the table of the principal altar suffered a small fracture at its

extremity, *you sought to be instructed through the Apostolic See whether on account of this the consecration of that altar, or even of the entire church, ought to be renewed. To this* we have considered that this response should be given to your inquiry: since the walls remained in their integrity and the slab of the altar was not moved or enormously damaged, on account of the aforesaid cause neither the church nor the altar ought to be consecrated anew. [*Given at the Lateran, on the Nones of October, in the fifteenth year of our pontificate.* 1212.]

Chapter VII

Latin source headnote: A church or cemetery is polluted if an excommunicated person is buried in it.

The same, to the Bishop of Sens.

You consulted us (*And below:* [*cf. c.* 14, *On the Competent Forum,* II. 2.]) But cemeteries *in which* the bodies of excommunicated persons happen to be buried *through the violence of their relatives* will have to be reconciled by the sprinkling of solemnly blessed water, as is accustomed to be done in dedications of churches. [*But the procurations, etc. Given at the Lateran, on the third day before the Kalends of May, in the sixteenth year of our pontificate.* 1213.]

Chapter VIII

Latin source headnote: One who caused a church to be consecrated is bound to endow it. This it says, and keep this case in mind.

Honorius III, to the Queen of Hungary.

Since, as became known to us from the report of the *beloved sons* of the chapter of Oradea, *kindled by the zeal of devotion* you caused their church to be consecrated, *we assuredly hope that the zeal which induced you to the consecration of that church ought also to animate you to confer an endowment upon it, and indeed,* since a church is not to be consecrated unless provision has been made for it from an endowment, you ought the more liberally to open the hands of your munificence to endow the aforesaid church, inasmuch as *you can do it more easily and* are now more strongly bound to it as though by a debt.

Chapter IX

Latin source headnote: A polluted church cannot be reconciled by a simple priest, even if the water was blessed by a bishop.

Gregory IX, to the Bishop of Astorga.

We do not deny that a church can be reconciled by another bishop with water blessed by a bishop, while prohibiting this from henceforth being done by simple priests, notwithstanding the custom of the province of Braga, which ought rather to be called a corruption; for although a bishop can commit those things that belong to jurisdiction, he cannot entrust to clerics of an inferior grade those things that belong to the episcopal order. But what has hitherto been done by the same persons concerning reconciliation at the command of bishops we mercifully tolerate. [*Churches, etc.* (*cf. c.* 9, *On the Immunity of Churches,* III. 49.) *Given at the Lateran, on the twelfth day before the Kalends of June, in the seventh year of our pontificate.* 1233.]

Chapter X

Latin source headnote: A church, even one not consecrated, is to be reconciled if it is polluted.

The same, to the same.

If an unconsecrated church has been polluted by anyone's semen or by the shedding of blood, let it immediately be washed with exorcized water, lest the instruments of divine praise be suspended [*in it*]; nevertheless, it is to be consecrated as soon as it can be. [*Given at the Lateran, on the twelfth day before the Kalends of June, in the seventh year of our pontificate.* 1233.]

Title XLI: On the Celebration of Masses, the Sacrament of the Eucharist, and the Divine Offices

Chapter I

Latin source headnote: A priest is bound to say the canonical hours at the due hours; nevertheless, for a cause he is permitted to say them through Vespers inclusive. This it says according to one understanding.

From the Council of Agde.

After the morning office has been completed in the morning, let a priest discharge the due task of his service, namely, *by chanting* Prime, Terce, Sext, None, and Vespers, yet in such a way that they are completed publicly at the suitable *and appointed* hours, according to possibility, either by himself or by the scholars. Then, after the hours have been completed and the sick visited, if he wishes, let him go out fasting to rural work so that he may again be able to assist the necessities of pilgrims and guests, or of diverse travelers, *also* of the sick and the dead, until the appointed hour, according to the quality *and opportunity* of the time. From the sayings of Benedict: The Prophet says, "Seven times in the day I have spoken praise to you"; which sevenfold number is fulfilled by us *in this way*, if we discharge the offices of our service at the time of Matins, Prime, Terce, Sext, None, Vespers, and Compline, *because, as the Prophet says: seven times in the day, etc* For concerning the night watches the same Prophet says: "At midnight I arose *to confess to you*, etc." Therefore, at these times let us render praises to our Creator for the judgments of his justice.

Chapter II

Latin source headnote: On account of a special Mass, the Mass of the feria is not to be omitted.

From the Council of Tribur.

Certain persons *also* among the laity, *and especially matrons*, have as a custom that on each day they hear the Gospel "In the beginning was the Word" and particular Masses, that is, of the Holy Trinity and of Saint Michael; and therefore it was sanctioned in the same council that this is not to be done further except at its own time, and unless one of the [*faithful*] should wish to hear it on account of reverence for the Holy Trinity, not from another devotion. But if they wish Masses to be chanted for them, let them hear Masses of that same day for the salvation of the living and also of the dead.

Chapter III

Latin source headnote: It suffices for a priest to celebrate once a day, and it excepts two cases, namely necessity and the feast of the Nativity.

Innocent III, to the Bishop of Worcester.

You consulted *us whether a priest can celebrate two Masses on the same day; concerning which we* respond to you that, except on the day of the Lord's Nativity, unless a cause of necessity counsels it, it suffices for a priest to celebrate only one Mass once a day. [*Given on the seventh day before the Kalends of February.* 1206.]

Chapter IV

Latin source headnote: In a Mass of commemoration, although the proper preface is said, neither the angelic hymn nor the creed is said.

The same, to the Archbishop of Braga.

Our counsel (*And below:* [*cf. c.* 2, *On the Observance of Fasts,* III. 46.)] *Furthermore*, you inquired whether on ordinary days, on which it happens that Mass is celebrated in honor of the Holy Spirit, the Blessed Virgin, and the holy cross, the angelic hymn, the creed, and the proper preface ought to be chanted, *especially since in your regions Mass is solemnly celebrated in honor of the Blessed Virgin on Saturdays. To which indeed* we respond to your inquiry in this way: among us on ordinary days, when the solemnities of Masses are celebrated in honor of the Blessed Virgin, neither the angelic hymn nor the creed is chanted, although the proper preface is chanted in the Mass, so that the difference between a commemoration and a solemnity may be shown. Hence "We praise you, God" is more regularly omitted than said at morning Lauds. [*But since you asked, etc. Given at Rome, at Saint Peter's, on the ninth day before the Kalends of March, in the eighth year of our pontificate.* 1206.]

Chapter V

Latin source headnote: A priest is to take an ablution after receiving the Eucharist, unless he is going to say another Mass.

The same, to the Clerics of Saint Peter of Maguelone.

On your part (*And below:* [*cf. c.* 1, *On the Observance of Fasts,* III. 46.]) *Furthermore, you petitioned to be instructed through apostolic letters how a priest ought to take an ablution in the Mass. To which* we respond to your petition in this way: a priest ought always to take an ablution with wine after he has received the whole sacrament of the Eucharist, unless he is to celebrate another Mass on the same day, lest, if perhaps he received the wine of ablution, he impede the other celebration. [*Given at Rome, at Saint Peter's, on the Nones of November.* 1204.]

Chapter VI

Latin source headnote: If there are any words in the canon of the Mass that were not spoken by the Evangelists, we ought to believe that the Apostles received them from Christ, and their successors from the Apostles. And this it says as far as § "You asked." — (*You asked, etc.:*) In the sacrament of the altar water is transubstantiated with wine into blood. This it says as far as § "In the third place." The Sicilian Abbot. — (*In the third place, etc.:*) The prayer that is said in the secret on the feast of Saint Leo

has been changed, because where it used to be said, "Grant us, Lord, that this offering may profit the soul of your servant Leo," today it is said, "that through the intercession of blessed Leo this offering may profit us"; and this change occurs because the saints do not need our prayers, but we need theirs. This it says as far as the end. The Abbot.

The same, to J., formerly Archbishop of Lyon.

Since, *renouncing for the greater part in the care of pastoral governance the office of Martha, who was busy about many things, you have chosen to dwell in the house of the Lord as though an abject with those who chose the best part, sitting with Mary at the feet of the Lord so that they may meditate continually in his law, preferring the beauty of Rachel to the weak eyes of Leah, we believe such understanding of the scriptures flourishes in you that you can not only break bread for little ones, but also minister solid food to the advanced and untie the knots of difficult questions. But because, recognizing in the primacy of the prince of the Apostles the teaching authority of the Apostolic See, you believe that the greater causes of the Church are to be referred to it, we gladly respond, as the Lord inspires us, to your consultations, which we know you raised not for the advantage of earthly utility, since they contain no civil question, but for the advancement of souls, namely so that obscure scriptures may come forth into the light*. For you asked *indeed* who added to the form of words that Christ himself expressed, when he transubstantiated bread and wine into his body and blood, that which no Evangelist is read to have expressed in the canon of the Mass used by the universal Church. For since it is thus read in the Gospel: "Taking the chalice, giving thanks, he blessed it and gave it to his disciples, saying: Drink from this, all of you; for this is my blood of the new testament, which shall be poured out for you and for many others unto the remission of sins," in the canon of the Mass this phrase, namely "the mystery of faith," is found interposed among those words. Hence, since no Evangelist testifies that Christ said this, *you are moved not a little and* marvel that anyone has attempted to assert that he said anything more than any of the Evangelists asserts.

But if you diligently inspect the form of the canon itself, beyond this concerning which your fraternity inquired, you will be able to find in the same canon two other things, namely "with his eyes raised to heaven" and "of the eternal testament," which are not read in the Gospel text. Indeed, we find many things, both words and deeds of the Lord, omitted by the Evangelists that the Apostles are read either to have supplied in word or expressed in deed. For Paul says thus in the Acts of the Apostles: "You ought to remember the word of the Lord Jesus, who said: It is *more* blessed to give than to receive." None of the four Evangelists wrote this. Nor did any of them express what Paul, writing to the Corinthians concerning Christ, says: "He was seen by more than five hundred brothers at once; then he was seen by James; but last of all, as though by one born out of due time, he was seen also by me." The Evangelists themselves are also read mutually to have supplied among themselves those things omitted by one or some of them. Hence, while three Evangelists placed "this is my body," Luke alone added "which shall be delivered for you"; and while Matthew and Mark say "for many," Luke says "for you." But Matthew added "unto the remission of sins." Furthermore, those things that are added in the canon of the Mass can be proved from other places in the Gospel. For John, describing the raising of Lazarus, asserts that Jesus lifted his eyes upward and said: "Father, I give thanks to you because you have heard me." *Elsewhere the same also says: "Jesus spoke these things and, lifting his eyes to heaven, said: Father, glorify your Son."* Therefore, if at that time he lifted his eyes to the Father in heaven when he recalled the soul of Lazarus to the lifeless body, it appears more probable

that he lifted his eyes to the Father in heaven when he changed bread and wine into his own body and blood.

Furthermore, as was expressed above, while "of the new testament" is placed in the Gospel text, "and eternal" is interposed here. For the old testament, which was dedicated with the blood of goats and calves, promised temporal things; but the new, which was consecrated with the blood of Christ, promises eternal things. And therefore that testament was old and transitory, but this is new and eternal. Or, to use another reason, from the same ground on which it is described as new, that is, last, it is proved to be eternal, that is, perpetual. For the last testament of a man remains unalterable because it is confirmed by the death of the testator; according to which the Apostle asserts that a testament is confirmed in death, otherwise it is not valid while the one who makes the testament lives. Furthermore, not only a writing but also a promise is called a testament, according to which the Apostle himself writes: "Therefore he is the mediator of the new testament, so that those who are called may receive the promise of the eternal inheritance." Thus, therefore, what is found in the canon itself ought to be understood: "For this is my blood of the new and eternal testament," that is, the confirmer of the new and eternal promise, just as the Lord promises, saying: "He who eats my flesh and drinks my blood has eternal life."

But from that word concerning which your fraternity raised a question, namely "the mystery of faith," certain persons thought to draw a defense of error, saying that in the sacrament of the altar there is not the truth of the body and blood of Christ, but only an image, appearance, and figure, because scripture sometimes commemorates that what is received at the altar is a sacrament, mystery, and example. But such persons fall into the snare of error from the fact that they neither understand the authorities of scripture fittingly nor receive the sacraments of God reverently, *knowing alike neither the scriptures nor the power of God*. For if *for this reason*, because the sacrament of the altar is a figure, it is denied to be truth, then neither the death nor the resurrection of Christ, since it is a figure, is to be believed as truth, since the Apostle manifests the death and resurrection of Christ to be a likeness and image: "Christ," he says, "died for our offenses and rose again for our justification." Peter, the prince of the Apostles, also writes thus in his epistle: "Christ suffered for us, leaving you an example, that you may follow his footsteps." Therefore, if both the death of Christ and his resurrection are an example, so that we also, dead to sin, may now live to justice, why, if it was not truth because it was an example, then Christ neither truly died nor truly rose from the dead. But may this error be far from the hearts of the faithful, since the Prophet testifies concerning him that he himself truly bore our infirmities and himself carried our sorrows. Nevertheless, it is called the mystery of faith because one thing is believed there other than what is seen, and one thing is seen other than what is believed. For the appearance of bread and wine *is* seen, and the truth of Christ's flesh and blood and the power of unity and charity are believed. *But what is called the mystery of faith in this place is elsewhere, according to John, described as spirit and life. For spirit is mystery according to this: "The letter kills, but the spirit gives life"; and faith is life, according to what is read: "My just man lives by faith," on account of which the Lord himself says: "The words that I have spoken to you are spirit and life."*

Nevertheless, a subtle distinction is to be made among the three things that are distinct in this sacrament, namely the visible form, the truth of the body, and the spiritual power. The form is of bread and wine, the truth is of flesh and blood, and the power is of unity and charity. The first is sacrament and not reality. The second is sacrament and reality. The third is reality and not sacrament.

But the first is the sacrament of a twofold reality. The second *however* is the sacrament of one and exists as the reality of the other. The third *indeed* is the reality of a twofold sacrament. We therefore believe that the Apostles received from Christ, and their successors from them, the form of words as it is found in the canon. *For, as was expressed above, the Apostles both supplied in words many things omitted by the Evangelists concerning the words and deeds of the Lord and expressed them in works.*

§ 1. You also asked whether water with wine is converted into blood. Concerning this, opinions vary among the scholastics. For it appears to some that, since two principal sacraments flowed from the side of Christ—of redemption in the blood and of regeneration in the water—the two things, wine and water, which are mixed in the chalice, are changed by divine power into those two, so that in this sacrament there may fully be truth and figure. But others hold that the water with the wine is transubstantiated into blood, since, mixed with wine, it passes into wine, although natural philosophers assert the contrary, who say that water can be separated from wine by art. Furthermore, it can be said that the water does not pass into blood, but remains surrounded by the accidents of the prior wine in such a way that it assumes the taste of wine. This is proved from the fact that, if other wine is placed in the chalice after the consecration of the chalice, it indeed does not pass into blood or become mixed with the blood, but, mixed with the accidents of the prior wine, it is poured all around the body that lies hidden under them, without wetting that which is surrounded. Nevertheless, those accidents appear to affect the wine added, because, if *pure* water has been added, it assumes the taste of wine. It therefore happens that accidents change the subject, just as it happens that the subject changes the accidents; for nature yields to miracle, and power works beyond custom. Nor is it believed unfitting or absurd if water is believed to be in the body of Christ, since it is read to have issued from his side. *But it is wicked to opine what certain persons presumed to say, namely that the water is converted into phlegm. For they also lie that not water but watery humor issued from the side of Christ, not attending that two sacraments flowed from the side of Christ and that persons are baptized not in phlegm but in water, according to what the Lord declares: "Unless anyone is born again of water and the Holy Spirit, he shall not enter the kingdom of God."*

But among the aforesaid opinions that one is judged more probable which asserts that the water with the wine is changed into blood, so that the property of the sacrament may shine forth more expressly. For since many waters are many peoples, according to what is read elsewhere, "Blessed are you who sow upon all waters," water is therefore united to wine so that the people may be united to Christ. For through this, that he *both* assumed from what is ours and we received from what is his, we are joined by so indissoluble a bond that he who is one with the Father through ineffable unity becomes one with us through admirable union, and through this, with him himself mediating in common, we are made one with the Father. "Holy Father," he says, "preserve in *your name* those whom you have given me, that they may be one, as we also are; but I ask not for these alone, but for those who will believe in me through their word, that they also may be one in us, and that the world may believe that you have sent me."

§ 2. In the third place *indeed*, your fraternity inquired *who changed, or when, or* why that which is contained in older codices in the secret of blessed Leo was changed, namely thus: "Grant us, Lord, that this offering may profit the soul of your servant Leo," when in modern sacramentaries it is held: "Grant us, we beseech you, Lord, that through the intercession of blessed Leo this offering may profit us." Concerning this we respond to you *in this way*: *we do not know who changed it or when it was changed.*

We know, however, on what occasion it was changed, because, since the authority of sacred scripture says that one who prays for a martyr does injury to the martyr, the same is to be thought by similar reason concerning the other saints, because they do not need our prayers, on account of the fact that, since they are perfectly blessed, all things fall out for them according to their wishes. But we rather need their prayers, for, since we are wretched, our evils disturb us on every side. Hence, what is contained in very many prayers—"may such an offering," *namely*, "profit or benefit this or that saint unto glory and honor"—ought *assuredly* to be understood in this way: that it profits to this end, that he is glorified more and more by the faithful on earth, *or even honored*, although very many judge it not unfitting that the glory of the saints is increased until the judgment, and therefore that in the meantime the Church can soundly desire an increase of their glorification. But whether in this article that distinction has a place by which it is taught that some of the dead are very good, others very evil, others moderately good, and others moderately evil—whence the suffrages made by the faithful in the Church for the very good are acts of thanksgiving; for the very evil, consolations of the living; but for the moderately good, expiations; and for the moderately evil, propitiations—let your discretion investigate. *Henceforth we petition to be aided before God by your prayers.* [*Given at the Lateran, on the third day before the Kalends of December, in the fifth year.* 1202.]

Chapter VII

Latin source headnote: One who simulates confecting and does not confect sins more gravely than one who confects while in mortal sin.

The same, to the Rectors of the Roman Fraternity.

Concerning a man (*And below:*) For you asked *of us* what is to be thought concerning an incautious priest who, when he knows that he is constituted in mortal sin, doubts on account of the consciousness of his offense whether to celebrate the solemnities of Masses, which he cannot omit on account of some necessity, *and, being gravely constrained between two things, while he fears to carry out the divine ministry lest he offend the people awaiting it, and dreads to confect the body of Christ lest, receiving it unworthily, he eat and drink judgment to himself*, after all the other circumstances have been performed, feigns that he celebrates Mass and, suppressing the words by which the body of Christ is confected, simply consumes only bread and wine, believing that through what he outwardly presents he satisfies the people, so that through what he intends he ought not provoke God. Therefore, since false remedies, which are more grave than true perils, are to be cast aside, although one who on account of consciousness of his crime considers himself unworthy *ought reverently to abstain from a sacrament of this kind, and therefore* sins gravely if he irreverently intrudes himself upon it, nevertheless he who has presumed fraudulently to simulate it in this way appears *without doubt* to offend more gravely: for the former, *by avoiding a fault while he acts*, falls into the hand of the merciful God alone; but the latter, *by committing a fault while he avoids one*, binds himself not only to God, whom he does not fear to mock, but *also* to the people, whom he deceives. [*Given at Sora, on the tenth day before the Kalends of October, in the year of our pontificate.* 1208.]

Chapter VIII

Latin source headnote: Here he disproves the opinion which holds that in the sacrament of the altar water is converted into phlegm, and proves that Christ was true God and true man, and that true water issued from his side.

The same, to the Bishop of Ferrara.

You assert that you read in a certain decretal epistle of ours that it is a wicked thing to opine what certain persons presumed to say, namely that in the sacrament of the Eucharist water is converted into phlegm. For they lie that *also* not water but watery humor issued from the side of Christ. *Although you recount that great and authoritative men held this, whose opinion you have hitherto followed in speech and writings, nevertheless, since we hold the contrary, you are compelled to consent to our opinion. But you confess that the word of John the Apostle greatly moves you, saying: "There are three that give testimony on earth: the spirit, the water, and the blood, and these three are one"; although this last phrase is not found in many codices, which you say is thus expounded by all: that they are one, that is, testify concerning one and the same thing, namely concerning the humanity of Christ. Moreover, if that which flowed from the side of Christ was true water and not a humor of the human body, you do not see how it is proved through it that Christ is man. For the gloss upon that place has thus: "The spirit, that is, the human soul which he emitted in the Passion; the water and blood that flowed from the side of Christ," which could not happen if he did not have the true nature of flesh. Thus, therefore, you propose from both the text and the gloss that through that water it is proved that Christ is true man; and therefore, if it is said that it was not true water but the watery humor of the human body, the words of both the expositor and the Apostle appear intelligible to you. But if it is said that it was true water, as we believe and confess, you sufficiently understand neither the former nor the latter. Hence you humbly petitioned us that, for the general utility of readers and for removing the cloud from your heart, we deign to expound this sufficiently and clearly.* Therefore, in response to the insistence of your supplication, we answer that certain persons said—but erred—that Christ was not true God but an adopted God, as the wretched Arians; others *however* said that Christ was not true man but a phantom, as the impious Manichaeans. But against heresies of this kind John the Apostle speaks in his epistle, saying: "There are three that give testimony in heaven: the Father, the Word, and the Holy Spirit, and these three are one," intending through this to show that Christ is true God. "And there are three that give testimony on earth: the spirit, the water, and the blood," intending through this to show that Christ is true man. For two things are principally required for the being of a man, namely body and soul, from the conjunction of which a true man subsists. Moreover, through the fact that at the moment of death Christ, having inclined his head, delivered up the spirit, concerning which he had cried with a great voice, "Father, into your hands I commend my spirit," it is manifestly proved that he had a spirit, not only vital breath but *also* a rational soul, concerning which he had foretold: "My soul is sorrowful even unto death," and: "I have power to lay down my soul and again to take it up." Moreover, through the fact that one of the soldiers opened his side with a lance and immediately blood and water came out, it is openly proved that Christ had a true body. For neither blood nor water could have issued from a phantasmal body; hence "he who saw it *indeed* furnished testimony, and his testimony is true, because there are three that give testimony on earth: the spirit, the water, and the blood." Namely, that Christ is true man, subsisting from a rational soul and human flesh, is proved from the fact that he emitted the vital spirit; and it is proved concerning the true body because blood and water issued from it, for a rational soul could vivify only a human body, from which things true man consists. Furthermore, just as there was true spirit and true blood, so without doubt there was true water, since Christ is truth and every falsehood is altogether alien to truth. For if what issued from the side of the Savior had not been water but phlegm, he who saw and furnished testimony to the truth would assuredly have said not "water" but "phlegm." Nor would the true sacrament of regeneration have been shown in this, since through the sacrament of baptism we are regenerated not in phlegm but in water. Nor could it be

proved by a true argument through this that in the sacrament of the Eucharist water is to be mixed with wine, if not water but phlegm had flowed with the blood from the side of Christ. Nor would the figure that preceded concerning this matter in the Old Testament have been true, when *namely* Moses struck the rock with a rod and from it *indeed* not phlegm but water flowed. It remains, therefore, that whatever the nature of that water—whether natural or miraculous, whether newly created by divine power or resolved in some part from the component things—it was without doubt true water, since both a composite can naturally be resolved into its components and an elemented thing into the elements, just as his sweat was true, like drops of blood running down upon the earth. Moreover, since four elements concur in the composition of the human body, namely earth *and* water, air and fire, and four humors similar to them concur in the vegetation of the same body, namely blood *and* yellow bile, phlegm, and black bile, in order to demonstrate more expressly the truth of the human body, John expressed one of the former and one of the latter, and from the former and the latter especially those that were more congruent with the mystery: from the elements, water, and from the humors, blood; in which two especially shine forth the two sacraments, namely of redemption and regeneration. [*Given on the third day before the Nones of March, in the twelfth year.* 1209.]

Chapter IX

Latin source headnote: It commands prelates and clerics, in virtue of obedience, to celebrate the nocturnal and diurnal office diligently and devoutly.

The same, in the general council.

We report with grief that not only certain lesser clerics but even some prelates of churches spend almost half the night on excessive banquets and unlawful tales, to be silent concerning other things, and, leaving the remainder to sleep, are scarcely awakened at the diurnal song of the birds, running through Matins everywhere with continual cutting-short. There are also others who scarcely celebrate the solemnities of Masses four times a year and, what is worse, disdain to be present. And if sometimes they are present while these are celebrated, fleeing the silence of the choir, they attend outside to conversations of laymen; and while they pour out their hearing upon improper discourses, they do not extend attentive ears to divine things. We therefore entirely prohibit these and similar things under penalty of suspension, strictly commanding in virtue of obedience that they diligently and devoutly celebrate alike the nocturnal and diurnal divine office, so far as God shall have granted them.

Chapter X

Latin source headnote: The Eucharist ought to be kept cleanly, and at its elevation and carrying the people ought to incline themselves; and when it is carried to a sick person, it ought to be carried in decent attire and with a light; but transgressors are to be gravely punished.

Honorius III.

Indeed, since formerly [*a golden vessel full of manna, prefiguring the body of Christ's divinity, was placed in the ark of the covenant covered with gold within the holy of holies so that it might be kept cleanly in a venerable place, we grieve and are exceedingly saddened that in very many provinces priests, contemning the canonical sanctions, indeed the divine judgment, guard the sacred Eucharist carelessly and handle it uncleanly and indevoutly, as though they neither feared the Creator, loved the Re-creator, nor dreaded the Judge of all, although the Apostle threatens*

terribly that one who has trampled upon the Son of God, regarded the blood of the testament as polluted, or done insult to the Spirit of grace merits worse punishments than a transgressor of the Mosaic law, who was punished by a sentence of death.] Lest [*therefore*] *henceforth* divine indignation blaze more gravely *against the indevout* on account of the carelessness of priests, we command by strict precept that the Eucharist always be placed honorably by priests in a separate place, clean *also* and sealed, and be preserved devoutly and faithfully. Moreover, let every priest frequently teach his people that, when the saving host is elevated in the celebration of Masses, *each person* is reverently to incline himself, doing the same when the priest carries it to a sick person. Let him carry it in decent attire, with a clean veil placed over it, and carry it openly and honorably before his breast with every reverence and fear, with a light *nevertheless* always preceding, since it is the brightness of eternal light, so that from this faith and devotion may be increased among all. But let prelates not defer gravely to punish transgressors of a mandate of this kind if they themselves wish to escape divine and our vengeance. *But you are to cause the aforesaid things to be observed in such a way that you do not become participants in the vengeance, but in the crown.* [*Given at Viterbo, on the tenth day before the Kalends of December, in the fourth year of our pontificate.* 1219.]

Chapter XI

Latin source headnote: In collegiate churches two Masses ought to be celebrated collegially, one for the dead, the other according to the requirement of the day, as for a feast if a feast occurs, or for the feria if it is a feria.

The same, to All Prelates of Churches.

Since the creature does not have that which he may render to the Creator according to his merits (*And below:*), *since, therefore, the Gallican Church, through the grace of God placed as a lamp upon a lampstand, shines upon others by example, who, seeing its good works, glorify the heavenly Father, lest, which may it not be, it be overshadowed by the darkness of so great a negligence and consequently overshadow others, we have considered that your universality should be requested and admonished, and through apostolic writings we* command you that, *all and each providently attending that to serve God is to reign*, you permit no torpor of negligence to creep upon you, *as hitherto*, by which you might fail to celebrate conventually the solemnities of Masses both for anniversaries of the dead and for a feast or feria according to the congruence of the times, *and cause them to be celebrated conventually, so that thus, as though praying without interruption, you may merit to be heard by him who is present to all who invoke his name in truth.* [*Given at Anagni, on the fourth day before the Nones of July.* 1217.]

Chapter XII

Latin source headnote: On the day of the Lord's Supper a bishop ought to celebrate Mass and confect chrism only in his own church.

The same.

From your report *we learned that on the day of the Lord's Supper you are held by ancient custom to confect chrism in the church of Siponto; but, when on the morning of that same day you approach the church of Monte Gargano so that there, as is customary, you may receive the pilgrims, the clergy and people of that place compel you to celebrate Mass in that church of Monte Gargano before you return to Siponto, concerning which you implored our counsel and that of the Apostolic See.* But since *chrism is confected on that day within the solemnities of Masses, and* it suffices for any priest, whatever dignity in which he shines, to celebrate one Mass a day—for he is

also very happy who worthily celebrates one—we command your fraternity that on the day of the Lord's Supper you endeavor to celebrate the solemnities of Masses only in the church of Siponto, in which you are bound to confect chrism.

Chapter XIII

Latin source headnote: In the sacrifice of the altar more wine than water is to be placed.

The same, to the Archbishop of Ablas.

A very pernicious abuse, *as we have heard*, has become established in your regions, namely, that a greater quantity of water than of wine is placed in the sacrifice, although according to the reasonable custom of the universal Church more wine than water is to be placed in it. Therefore we command your fraternity [*through apostolic writings*] that you do not do this *henceforth* or permit it to be done in your province. [*Given on the Ides of December, in the fifth year.* 1220.]

Chapter XIV

Latin source headnote: A priest who sacrifices without water and fire, or with leavened bread or in a wooden vessel, is deposed from office and benefice.

The same, to the Bishop of Brescia.

We received your letters, containing that, when you inquired concerning the excesses of *Master Maurus*, priest of the church of Saint Bridget of Brescia, *according to the duty of the pastoral office*, he confessed that, when on a certain day he had neither host nor chalice, he presumed to celebrate the solemnities of Masses in leavened bread and in a wooden cup *while the people stood by*. *On this account you subjected him to perpetual interdict, counseling that he change his life for the better in some regular church. But afterward, when he petitioned before our venerable brother the Bishop of Ostia, then legate of the Apostolic See, that he act mercifully with him, the same bishop, restoring the aforesaid priest to the celebration of divine things, delegated the cause concerning the suspension of the benefice to the provosts of Saint Salvator and Saint Luke of Brescia, who restored him to the benefice. But afterward, having returned from the regions beyond the sea*, and understanding again that the aforesaid church was being injured in many ways through the malice of the said priest, you, repeating the office of inquiry, discovered from his confessions that the same man sacrificed without fire and water, *on account of which you petitioned to be instructed by our response what is to be done concerning him.* Therefore, since he is proved to have sinned either from manifest malice or *from* excessive folly, we command *your fraternity* that, *if truth supports the premises*, you deprive him perpetually of office and benefice, *the obstacle of appeal having been removed*.

Title XLII: On Baptism and Its Effect

Chapter I

Latin source headnote: Although a boy has been immersed three times in water in the name of the Father, and of the Son, and of the Holy Spirit, if it has not been said, "I baptize you in the name of the Father, etc.," he has not been baptized.

Alexander III.

If someone *indeed* has immersed a boy three times in water in the name of the Father, and of the Son, and of the Holy Spirit, amen, and has not said: "I baptize you in the name of the Father, and of the Son, and of the Holy Spirit, amen," the boy has not been baptized.

Chapter II

Latin source headnote: If it is probably doubted whether someone has been baptized, he can be baptized with the form expressed here.

The same.

Those concerning whom there is doubt whether they have been baptized are baptized after these words have been set forth: "If you are baptized, I do not baptize you; but, if you have not yet been baptized, I baptize you, etc."

Chapter III

Latin source headnote: The sacrament of baptism is usefully conferred upon little children although they neither believe nor understand, and original sin is remitted to them. This is what it says as far as § "But." — (But etc.:) Original sin, which is contracted without consent, is remitted in baptism even to one not consenting, as to little children; it is otherwise concerning actual sin, because, just as it is not committed without consent, so it is not remitted. This is what it says as far as § "But it is still." Abbas. — (But it is still:) Although original sin is forgiven in baptism to little children, who nevertheless cannot consent, yet in adults who are insane or sleeping, who do not consent to baptism, actual sin is not forgiven, and likewise not even original sin. This is what it says. — (Likewise etc.:) Insane or sleeping persons who have been baptized, if before insanity or sleep they wished to be baptized, receive the character; otherwise it is otherwise; but those coerced receive it causatively. This is what it says as far as the end.

Innocent III, to the Archbishop of Arles.

He will understand that the greater causes of the Church, especially those touching articles of faith, are to be referred to the see of Peter who notes that, when the Lord asked him whom the disciples said that he was, he answered: "You are the Christ, the Son of the living God," and that the Lord prayed for him that his faith might not fail. You therefore ask us to respond to certain questions that heretics had raised against Catholics. For they assert that baptism is conferred uselessly upon little children, which they strive to prove *both by reason and by authority*, adducing first and principally that, since, according to the word of James the Apostle, saying in his epistle, "Charity covers a multitude of sins," and according to that testimony of the Truth in the Gospel concerning the sinful woman who had washed his feet, declaring, "Many sins are forgiven her, because she loved much," crimes are forgiven only through charity and in charity, sin is not forgiven in baptism to little children, who neither perceive nor consent and do not have charity, which is infused only into those who perceive and consent. *And thus baptism does not profit them, because it is not to be conferred upon such persons. In the Gospel also it is read: "He who has believed and has been baptized will be saved; but he who has not believed will be condemned"; whence little children, whether or not they have been baptized, will be condemned, as being unbelievers.*

To this, however, we respond in this manner: baptism succeeded circumcision. For far be it from us to fall into that condemned heresy which wrongly affirmed that the law together with the Gospel, and circumcision together with baptism, must be observed, because according to the Apostle, saying to

the Galatians: "If you are circumcised, Christ profits you nothing." Since therefore circumcision was conferred by command of the Lord upon adults as well as little children, lest baptism, which succeeded *in* its place and nevertheless exists more generally, since both males and females are baptized, should seem to have a lesser effect, it must be conferred upon adults as well as little children. For just as *formerly*, without any distinction, the Mosaic law proclaimed: "The soul whose flesh of the foreskin has not been circumcised shall perish from his people," so now the evangelical voice thunders without distinction: "Unless one has been reborn from water and the Holy Spirit, he shall not enter the kingdom of God," excluding from this generality neither sex nor age. *Whence, just as the soul of the circumcised did not perish from his people, so he who has been reborn from water and the Holy Spirit will obtain entrance into the kingdom of heaven.*

Nevertheless, it must carefully be noted how much more baptism confers upon Christians today than circumcision once conferred upon the Jews. At the end of the aforesaid authority adduced from the Old Law it was said, "shall perish from his people"; but in the evangelical authority it was added, "shall not enter the kingdom of God"; because, although original guilt was remitted through the mystery of circumcision and the danger of damnation was avoided, nevertheless there was no arrival at the kingdom of heaven, which until the death of Christ was closed to all. But through the sacrament of baptism, made red with the blood of Christ, guilt is remitted, danger is avoided, and the kingdom of heaven is also reached, the gate of which the blood of Christ mercifully reopened to his faithful. For far be it that all little children should perish, so great a multitude of whom dies daily, without the merciful God, who wishes no one to perish, having provided some remedy for their salvation also.

Moreover, from the force of the letter it is sufficiently clear that the aforesaid authorities are to be understood only of adults, who have a multitude of sins, since they cannot be understood of little children, who are held only by original sin. Similarly that *other* authority is to be resolved: "He who has believed and has been baptized, etc.," since little children cannot believe, but adults can. And for this reason the whole authority is to be understood here *only* of adults, and the first clause is not to be referred to some and the second to others; although some concede that little children believe, not through the use but through the habit of faith that they receive in baptism, just as many other words according to common usage are referred not to act but to aptitude.

But what the objectors adduce—that faith or charity and the other virtues are not infused into little children, as persons not consenting—is not conceded absolutely by very many; since on this account a question is recounted among doctors of theology, some asserting that through the virtue of baptism guilt indeed is remitted to little children, but grace is not conferred, while others say that sin *both* is forgiven and the virtues are infused into those having them as to habit, not as to use, until they reach adult age.

But certain persons believe that from this solution they have found a way to other questions, arguing from the fact that we say original sin is forgiven to little children in baptism that, by a similar reason, sin is also forgiven to adults who are sleeping or insane if they are baptized. For since neither then perceives or consents, they say that the same judgment must be made in similar cases. Here, however, we say that a distinction must be made, because sin is twofold, namely original and actual: original, which is contracted without consent, *and* actual, which is committed with consent. Original sin, therefore, which is contracted without consent, is by the power of the sacrament remitted

without consent; but actual sin, which is contracted *with* consent, is by no means remitted without consent.

But it is still asked why at least original sin is not forgiven in baptism to the insane and the sleeping, as it is to little children. To this it is to be answered in this manner: the Lord, who made the whole man sound on the Sabbath, does not know a work of imperfection, and for this reason forgives sins not in part but in whole. Furthermore, the punishment of original sin is deprivation of the vision of God; but the punishment of actual sin is the torment of perpetual Gehenna. Whence, if the first were forgiven to someone while the other was not forgiven, such a person would not be deprived of the vision of God on account of original sin forgiven, and would be tormented perpetually in Gehenna on account of the guilt of actual crime. But these things, as incompatible, by no means allow one another; indeed, they are mutually opposed.

Likewise, however, it is asked whether at least the character of the sacrament is impressed in baptism upon *such* sleeping and insane persons, so that, when awakened from sleep or freed from sickness, they are not to be baptized again. Now there are some who say that the sacraments which obtain their effect of themselves, such as baptism and order and other similar things, are conferred not only upon sleeping and insane persons but *even* upon the unwilling and contradicting, although not as to the reality, yet as to the character, since not only little children, who do not consent, but also the deceitful, who, although not in mouth, nevertheless dissent in heart, receive the sacrament.

But it is objected against such persons that those who had been immersed unwilling and resisting would at least by reason of the sacrament pertain to ecclesiastical jurisdiction, whence they would reasonably have to be compelled to observe the rule of the Christian faith. But it is contrary to the Christian religion that anyone always unwilling and wholly contradicting should be compelled to receive and observe Christianity. For this reason others distinguish, not absurdly, between one unwilling person and another unwilling person, one coerced person and another coerced person: that he who is violently drawn by terrors and punishments, and, lest he incur loss, receives the sacrament of baptism, such a one *indeed*, just like him who approaches baptism deceitfully, receives the impressed character of Christianity, and he, as one conditionally willing, although absolutely he does not will, is [*nevertheless*] to be compelled to the observance of the Christian faith.

In this case that decree of the Council of Toledo is to be understood, where it is said that those who long since were coerced to Christianity, as was done in the times of the most religious prince Sisebut, because it is now established that they have been associated with the divine sacraments, have received the grace of baptism, have been anointed with chrism, and have become participants in the body of the Lord, must also be compelled to hold the faith which they received by necessity, lest the name of the Lord be blasphemed and the faith which they received be held cheap and contemptible.

But he who never consents and wholly contradicts receives neither the reality nor the character of the sacrament, because expressly to contradict is more than not to consent at all; just as neither does he incur the mark of any guilt who, wholly contradicting and protesting, is violently compelled to burn incense to idols. But sleeping and insane persons, if, before they incurred insanity or fell asleep, they persisted in contradiction, because in them the purpose of contradiction is understood to endure, do not receive the character of the sacrament even if they have been immersed thus. But it is otherwise if they formerly existed as catechumens and had the purpose of being baptized; whence the Church has been accustomed to baptize such persons at the point of necessity. Therefore the sacramental

operation then impresses the character when it does not find the obstacle of a contrary will standing against it.

Chapter IV

Latin source headnote: No one can baptize himself, even when the point of necessity is imminent.

The same, to the Bishop of Metz.

You discharge the obligation *of the pastoral office when you ask to be instructed by a response of the Apostolic See concerning doubtful points of law*. Indeed, *by your letters to us* you intimated that a certain Jew, placed at the point of death, since he was among Jews only, immersed himself in water, saying: "I baptize myself in the name of the Father, and of the Son, and of the Holy Spirit, amen." *But now you ask whether the same Jew, persevering in devotion to the Christian faith, ought to be baptized. We, however, respond to your fraternity in this manner:* Since there ought to be a distinction between the one baptizing and the one baptized, as is *clearly* gathered from the words of the Lord saying to the Apostles, "Go, baptize all nations in the name of the Father, and of the Son, and of the Holy Spirit," the aforesaid Jew must be baptized anew by another, so that it may be shown that one is he who is baptized and another he who baptizes.

To signify this also, Christ himself willed to be baptized not by himself but by John; although, if such a man had died immediately, he would at once have flown to the heavenly homeland on account of faith in the sacrament, even if not on account of the sacrament of faith. For in baptism that spiritual generation is celebrated concerning which the Truth says: "You must be born anew, because, unless one has been reborn from water and the Holy Spirit, he shall not enter the kingdom of heaven." Therefore, just as in carnal generation, by which offspring is born from man and woman, one is he who carnally begets and another *is* he who is carnally begotten, so *also* in sacramental generation, by which offspring is reborn from water and the Holy Spirit, one ought to be he who spiritually generates and another he who is spiritually generated. Indeed, whether the exterior body or the interior heart is baptized, it is necessary that in each case paternity and filiation be capable of being found, by which the one baptizing and the one baptized are referred to each other. [*But the second, etc.* (*cf. c.* 5, *On Bigamists I.* 21.) *Given at Ferentino, on the fifth day before the Kalends of September, in the ninth year* 1206.]

Chapter V

Latin source headnote: Where the word or the element of water is lacking, there is no sacrament of baptism.

The same, to the Bishop of Moros.

Not that you might add *knowledge to yourself, as we believe, but that through the oracle of our word you might better instruct the ignorance of your subjects, you asked that an apostolic response be made* as to whether those little children are to be held as Christians whom, placed at the point of death, the simplicity of certain persons, on account of a scarcity of water and the absence of a priest, anointed upon the head and breast and between the shoulders by sprinkling saliva in place of baptism. We respond that, since in baptism two things, namely the word and the element, are always required of necessity, according as the Truth says concerning the word, "Going into the whole world, preach the Gospel to every creature, and baptize all nations in the name of the Father, and of the Son, and of the Holy Spirit,"

and the same says concerning the element, "Unless one has been reborn from water and the Holy Spirit, he shall not enter the kingdom of heaven," you ought not to doubt that those in whom not only both of the aforesaid things but one of them has been omitted do not have true baptism. [*Given at Rome, at Saint Peter's, on the Kalends of March, in the ninth year of our pontificate.* 1206.]

Chapter VI

Latin source headnote: Greeks ought not to rebaptize those baptized by Latins.

The same, in the General Council.

Although we wish to cherish and honor Greeks returning [*in*] our days to the obedience of the Apostolic See, sustaining their customs and rites insofar as we can with the Lord, nevertheless we neither wish nor ought to defer to them in those things which generate danger to souls and derogate from ecclesiastical honor. For after the Greek Church, with certain accomplices and supporters of its own, withdrew itself from the obedience of the Apostolic See, the Greeks began to abominate the Latins to such an extent that, among other things which they impiously committed in derogation of them, if at any time Latin priests had celebrated upon their altars, they themselves did not sacrifice upon them before they had washed them, as though polluted by this. The Greeks themselves also presumed with rash daring to rebaptize those baptized by Latins, and even now, as we have received, certain persons do not fear to do this. Wishing therefore to remove so great a scandal from the Church of God, at the persuasion of the sacred council we strictly command that henceforth they not presume such things, conforming themselves as sons of obedience to the sacrosanct Roman Church, their mother, so that there may be one fold and one shepherd. But if anyone presumes anything such, struck by the sword of excommunication, let him be deposed from every ecclesiastical office and benefice.

Title XLIII: On an Unbaptized Priest

Chapter I

Latin source headnote: If one not baptized is ordained, he does not receive the character of order.

From the Council at Compiègne.

If anyone ordained a priest discovers that he has not been baptized, let him be baptized and ordained again.

Chapter II

Latin source headnote: Omission of baptism does not harm one who probably believes himself to have been baptized.

Innocent III, to the Bishop of Cremona.

You resolved to consult the Apostolic See, *our venerable brother, as you ought*. (And below:) Whence we respond to your inquiry in this manner: we assert without hesitation, *from the authority of the holy Fathers Augustine and Ambrose*, that the priest whom you signified *by your letters* to have closed his last day without the water of baptism, because he persevered in the faith of holy Mother Church and in confession of the name of Christ, was freed from original sin and attained the joy of the heavenly

homeland. Read, *brother*, in the eighth book of Augustine's *City of God*, where among other things it is read: "Baptism is ministered invisibly to him whom not contempt of religion but the limit of necessity excludes." Examine also the book of Blessed Ambrose on the death of Valentinian, asserting the same. Therefore, with the questions put to rest, hold the opinions of the learned Fathers, and command continual prayers and sacrifices to be offered to God in your church for the aforesaid priest.

Chapter III

Latin source headnote: One not baptized cannot be ordained, and, if in fact he is ordained, he does not receive the character of order, although he was believed to have been baptized.

The same, to the Bishop of Ferrara.

Coming to the Apostolic See, *the beloved son* I., bearer of the present letters, explained to us that, after he had ascended *through each order as far as* the grade of priesthood, he finally discovered *for certain* that he had not been baptized according to the form of the Gospel; whence we caused him to be duly baptized *by our venerable brother N., Bishop of Tusculum*. And when there had been a rather lengthy disputation *before us* concerning the orders, certain persons inclined to this opinion: that, since baptism is the foundation of all the sacraments, another sacrament is not received before the reception of baptism, because, where there is no foundation, nothing can be built upon it.

But on the contrary it could seem otherwise. For since someone is made beyond doubt a member of Christ not only through the sacrament of faith but also through faith in the sacrament, and he who has Christ through faith, even if he does not have baptism, certainly has the foundation other than which no other can be laid, which is Christ Jesus, he appears able to build upon it both saving works and any ecclesiastical sacraments. For it is not generally true, either of the new or of the old sacraments, that baptism is their foundation, because both the sacrament of marriage and *also the sacrament* of the Eucharist can be received by the unbaptized. Furthermore, the sacrament of order, not only pontifical but also priestly and Levitical, by its institution preceded baptism, from which it perhaps appears that before baptism orders of this kind could duly be conferred, especially upon those who are believed to be baptized.

For what if perhaps he who is believed to have been baptized, and has not been, has at least in fact been consecrated a bishop? Will all who were ordained by him have to be reordained? And since concerning many bishops it is not known whether they were reborn by the water of baptism, because neither they themselves remember this nor do others, is it therefore doubted whether such men were truly consecrated as bishops? Whence it is better to be silent than to say how many and how great things follow that are not only incongruous but absurd.

But because in the Council at Compiègne it is read to have been established that, if anyone ordained a priest discovers that he has not been baptized, he is to be baptized and ordained again, we, following in this doubtful case what is safer concerning the bearer of the present letters, command *your fraternity by apostolic writings* that you take care to promote him through each order as far as the priesthood, and permit him to minister in the priesthood, because that is not understood to be repeated which it is uncertain was done. Nor is there a bad judgment concerning the sacrament when not contempt of religion but the point of necessity excludes it. And certainly, concerning one who, born of Christian parents, has lived faithfully among Christians, it is so forcibly presumed that he was baptized that this presumption is to be held as certainty until perhaps the contrary is proved by the most evident arguments. [*Given at Rome, at Saint Peter's, on the Ides of April, in the ninth year.* 1206.]

Title XLIV: On the Custody of the Eucharist, Chrism, and the Other Sacraments

Chapter I

Latin source headnote: The Eucharist and chrism ought faithfully to be kept under keys, and those acting contrary are to be punished.

Innocent III, in the General Council.

We establish that in all churches chrism and the Eucharist are to be preserved under faithful custody with keys applied, lest a rash hand be capable of being extended to them for the perpetration of any horrible or nefarious things. But if he to whom the custody pertains should leave them incautiously, let him be suspended from office for three months; and, if through his carelessness any nefarious thing should happen from this, let him be subject to a graver punishment.

Chapter II

Latin source headnote: Household goods ought not to be placed in churches unless necessity presses. This it says first. Churches ought to keep their vessels and vestments clean. This second.

The same, in the same council.

We do not wish to leave uncorrected the fact that certain clerics so fill churches with their own household goods, and even those of others, that they appear to be lay houses rather than basilicas of God, not considering that the Lord did not permit a vessel to be carried through the temple. There are also others who leave not only the churches uncared for, but also the vessels of ministry, the vestments of the ministers, the altar cloths, and even *the* corporals themselves so unclean that at times they are a horror to some. But because zeal for the house of God consumes us, we firmly prohibit household goods of this kind from being admitted into churches, unless on account of hostile incursions, sudden fires, or other pressing necessities it is necessary to take refuge in them, yet in such a way that, when the necessity ceases, the things are carried back to their former places. We command also that the aforesaid oratories, vessels, corporals, and vestments be preserved clean and bright. For it appears excessively absurd to neglect in sacred things filth that would be unbecoming even in profane things.

Title XLV: On Relics and the Veneration of Saints

Chapter I

Latin source headnote: Without the Pope's permission it is not lawful to venerate anyone as a saint.

Alexander III.

We have heard that there are certain persons among you *who*, deceived by diabolical fraud, venerate after the manner of unbelievers as though a saint a certain man killed in drinking and drunkenness, although the Church scarcely permits prayer for such persons killed in drunkenness. For the Apostle says *that drunken men* will not possess the kingdom of God. Therefore do not presume henceforth to honor *that man*, since, even if *very many* miracles were done through him, it would not be lawful for you *publicly* to venerate him as a saint without the authority of the Roman Church.

Chapter II

Latin source headnote: Relics of saints cannot be sold, nor ought they to be displayed indiscriminately, lest the people be capable of being deceived concerning them.

Innocent III, in the General Council.

Since the Christian religion has often been disparaged by the fact that certain persons expose relics of saints for sale and display them indiscriminately, lest it be disparaged in the future, by the present decree we establish that from now on ancient relics are by no means to be displayed outside a reliquary or exposed for sale. But let no one presume publicly to venerate those newly discovered unless they have first been approved by authority of the Roman Pontiff. Moreover, let prelates *henceforth* not permit those who approach their churches for the sake of veneration to be deceived by various inventions or false documents, as [*also*] has been accustomed to occur in very many places on the occasion of gain. [*Of alms, etc.* (*cf. c.* 14, *X. On Penance V.* 38.)]

Title XLVI: On the Observance of Fasts

Chapter I

Latin source headnote: A vigil falling on Sunday ought to be fasted on Saturday, and the vigil of Blessed Matthias is to be fasted.

Innocent III, to the Clerics of Saint Peter of Maguelonne.

It was asked on your part *of us* whether, if the Nativity of the Lord, the Assumption of Blessed Mary, or the feast of one of the Apostles happens to fall on the second day of the week, the vigil ought to be fasted on the preceding Saturday, and whether a fast is to be enjoined on the vigil of Blessed Matthias the Apostle. To this we respond briefly that [*both*] on Saturday the vigils of the aforesaid feasts preceding the second day of the week and the vigil of Blessed Matthias the Apostle ought to be fasted. [*Moreover, etc.* (*cf. c.* 5, *On the Celebration of Masses III.* 41.) *Given at Rome, at Saint Peter's, on the Nones of November.* 1204.]

Chapter II

Latin source headnote: It does not admit of a fitting summary, and the text is sufficiently clear in itself, and many things are stated which are clear through the §§.

The same, to the Archbishop of Braga.

You sought our counsel *concerning certain articles: whether* [*namely*] *fasting is required on the vigils of all the Apostles, since many assert that fasting is not required on all, but only on six. Whether fasting is also required in Advent, since different persons think different things concerning this, some, but fewer, saying that fasting is required at that time, but more asserting that they are not held to this. Whether, moreover, if the feast of those whose vigils we fast happens to be celebrated on the second day of the week, the vigils are to be observed on the preceding Saturday. We, however, concerning this* respond to your consultation in this manner: *among us* the vigils of all the Apostles are to be celebrated in the observance of fasting, except the vigils of the Apostles Philip and James and of Blessed John the Evangelist, because the solemnity of the former is celebrated within the Easter solemnity, but that of the latter within the Nativity of the Lord. A fast is also observed among us during the Advent of the Lord. The vigils of saints whose feasts must be

celebrated on the second day of the week are also to be fasted on the preceding Saturday. But concerning the feast of Blessed Bartholomew the Apostle, concerning the celebration of which doubt arises among certain persons, *we respond to you seeking counsel* that in this you are to observe the custom of your region.

(And below: [*cf. c.* 4, *On the Celebration of Masses III.* 41.]) But since you asked what penance is to be enjoined upon those who during the days of Lent, at which time the privation of so great a famine pressed that a great part of the people perished on account of scarcity of grain, were compelled to eat meat, *we respond to you briefly* that we do not believe those persons are to be punished in such a case *whom so pressing a necessity excused*. Nevertheless, pour forth prayers to the Lord for them and with them, lest it be imputed to them in any way, because it belongs to good minds to fear guilt where guilt is not found at all.

Likewise, concerning those who, on account of the weakness *which they feel in themselves*, eat meat on Saturday *according to the custom of other lands*, which is by no means accustomed to be done in your parts, since this is borne with difficulty by others and from it arises for them an occasion of disparaging, we respond that concerning this you are to cause the custom of your region to be observed, yet in such a way that danger does not arise on this account for the weak and infirm.

Furthermore, *you asked to have an apostolic response* concerning those who become ill in Lent or on other solemn fasts and petition that the eating of meat be indulged to them, *some of whom promise that on this account they will give alms, but others, on account of the necessity of pressing illness, require that this be conceded to them by you as though from a debt. Concerning this we* respond to you that, since necessity is not subject to law, you can and ought to support the desire of the infirm when pressing necessity requires it, so that greater danger in them may be avoided. [*Given at Rome, at Saint Peter's, on the ninth day before the Kalends of March, in the eighth year of our pontificate.* 1206.]

Chapter III

Latin source headnote: If the feast of the Nativity falls on the sixth day of the week, it is lawful for all to eat meat, except those professed and those making a vow.

Honorius III, to the Bishop of Prague.

You asked it to be explained through the Apostolic See *whether it is lawful for those who are bound neither by vow nor by regular observance to eat meat when the day of the Lord's Nativity falls on the sixth day of the week. To this* we respond that those who are bound neither by vow nor by regular observance, if the feast of the Lord's Nativity happens to come on that day, can eat meat on the sixth day of the week on account of the excellence of the feast, according to the custom of the universal Church. Nor nevertheless are those to be reproved who out of devotion wish to abstain. [*Given at the Lateran, on the fourth day before the Kalends of November, in the first year of our pontificate.* 1216.]

Title XLVII: On Purification after Childbirth

Sole Chapter

Latin source headnote: A woman after childbirth can enter a church immediately, and is not held to abstain for any days according to the Mosaic law.

Innocent III, to the Archbishop of Armagh.

Wishing *to be instructed by an apostolic response, your fraternity humbly requested of us whether women ought to enter churches immediately after childbirth or to abstain from entering them for some days*. Although *indeed*, according to the Mosaic law, certain days had been determined during which women after childbirth refrained from entering the temple, nevertheless, because the law was given through Moses, but grace and truth were made through Jesus Christ, *we, adhering to the footsteps of the holy Fathers*, respond to your inquiry in this manner: after the shadow of the law vanished and the truth of the Gospel shone forth, if women, after bringing forth offspring, wish to enter a church to give thanks, they are burdened by no weight of sin on that account, nor is access to churches to be denied to them *in any way*, lest punishment seem to be turned into guilt for them. If nevertheless out of reverence they wish to abstain for a time, we do not believe their devotion is to be disapproved. [*Given at the Lateran.* 1198.]

Title XLVIII: On Churches to Be Built or Repaired

Chapter I

Latin source headnote: Those having a benefice in a church are held to contribute to its repair.

From the Council of Mainz.

Whoever have an ecclesiastical benefice are altogether to give assistance toward restoring the roofs of the church or repairing the churches themselves, *and are to render the ninth and the tenth*.

Chapter II

Latin source headnote: Lepers ought to be permitted, without prejudice to ancient parishes, to have their own church and priest, and they are not held to pay tithes from gardens or the nourishment of animals.

From the Lateran Council.

Since the Apostle says *that more abundant honor is to be shown to the lower members, certain persons, on the contrary, seeking the things that are their own, not those of Jesus Christ, do not permit lepers, who cannot dwell with the healthy or assemble at church with others, to have churches and cemeteries, nor to be assisted by the ministry of their own priest. Because this is known to be far from Christian piety, from the kindness of the Apostolic See* we establish that, wherever so many lepers have been gathered together under a common life that they are able to build a church with a cemetery for themselves and rejoice in their own priest, they are to be permitted to have them without any contradiction. Nevertheless, let them take care that they by no means exist as injurious to old churches in parochial right. For we do not wish that what is conceded to them for the sake of piety redound to the injury of others. We establish also that they are not to be compelled to render tithes from the gardens and nourishment of their animals.

Chapter III

Latin source headnote: On account of the excessive distance of a church, a new church can be built in its parish, and a certain portion from the old one assigned to it.

Alexander III, to the Archbishop of York.

Know that it has come to our hearing that the village which is called H. is said to be so far distant from the parochial church that *in* wintertime, when the rains overflow, the parishioners cannot approach it without great difficulty, whence they are unable to attend ecclesiastical offices at a suitable time. Therefore, because the said church is said so to abound *in* revenues that its minister can suitably have support apart from the proceeds of that village, we command *your fraternity by apostolic writings* that, if the matter is thus, you build a church there and, with the obstacle of appeal removed, institute in it a priest upon the presentation of the rector of the greater church with the canonical assent of the founder, who is to receive for his support the ecclesiastical revenues of the same village; nevertheless providing that suitable honor in it, according to the means of the place, be preserved for the mother church. This indeed appears capable of being done, since the lord of the same village wishes to confer twenty acres of fruitful land for the use of the priest. But if the person of the mother church should delay presenting a suitable man, or should wish to impede that work, you are nevertheless to cause the same work to be brought to completion, and not omit to institute a good man when the subterfuge of appeal has ceased.

Chapter IV

Latin source headnote: Rectors of churches can be compelled to be held to contribute, from the revenues which remain over, to the construction or repair of a church.

The same, to the Bishop of Lisieux.

Concerning those *indeed* who have parochial churches, we have considered that response should be made *to your fraternity in this manner*: when there is need, they ought to be compelled to contribute to the repair and construction of the churches from the goods which belong to the church itself, if any remain over for them, so that by their example the others may be invited.

Chapter V

Latin source headnote: A secular church can be restored to a regular state without prejudice to the clerics, and a privilege is not conferred upon a college that does not yet exist.

Urban III.

It came to our hearing *some time ago* that you desire to establish regular canons in the church *of Cologia*, from which you were called *and elected* to be bishop, *and suitably to provide for their institution from the goods conferred upon you*. Hence it is that, *commending in the Lord with praises in many ways your desire and purpose*, by apostolic authority we grant this to your devotion: *that, according to your vow, you may establish regular canons in the aforesaid church*, if the diocesan bishop consents to you in this matter, *to the honor of God and of your church according to the rule of Blessed Augustine, and institute them there with no one's contradiction or appeal standing in the way*. But if there *are* secular clerics in it *who* are known still to survive, we wish the necessities to be provided for them there or elsewhere, *according to the customs*, as long as they live. Although, moreover, you have petitioned us more insistently that we make a privilege of confirmation *concerning the canons* for the aforesaid church, we cannot by law defer to you, since no canons as yet exist there to whom a privilege may be conceded. *Indeed, when they have been instituted, both in these and in other things in which with God we shall be able, we shall more willingly defer to them in consideration of your prayers.*

Chapter VI

Latin source headnote: Notwithstanding an oath not to alienate the things of the church, a bishop can build a new church on account of need.

Celestine III.

Your [letter] has led us—(And below:) Furthermore, because, on the occasion of the oath which you assert that you furnished concerning not alienating the things of the church, you fear to erect churches in places of your episcopate in which the peoples dwelling there appear to need oratories *very greatly*, lest under pretext of new churches the church committed to you appear to be deprived, we command your fraternity *by notification of the present letters* that, on the occasion of that oath, you by no means omit salubriously to take care to provide for the needy people concerning the establishment of basilicas.

Title XLIX: On the Immunity of Churches, Cemeteries, and Things Pertaining to Them

Chapter I

Latin source headnote: In houses of churches a lay judge ought neither to judge nor seek lodging.

From the Synod of Pope John.

In houses of churches, let neither an envoy, nor a count, nor a public judge, nor a minister claim a court session or lodging as though by custom; but let them establish houses in public places, in which they may hold court and also be lodged *according to ancient custom*.

Chapter II

Latin source headnote: In a time of great necessity no one ought to be excused from the watch of the walls or of the city. This is what it says according to the understanding of Panormitanus.

Gregory, to the Archbishop of Tricensis.

It has come—(And below:) Let your fraternity permit no one to be excused from the watches of the walls *either* by our name or that of his church, or in *any* other way; but let all be compelled generally to this, so that, with all keeping watch, the custody of the city may better be provided for [*with the Lord assisting*].

Chapter III

Latin source headnote: A peasant bound to cultivation of the fields of a church cannot abandon it. This is what it says, summarizing generally.

The same, to Vitalis, Defender of Sardinia.

It has been reported—(And below:) It has *also* been told to us that the peasants of the [*possession*] *of the same* [*church of Cagliari*], abandoning its fields, furnish the cultivation *of labor* upon the possessions of private persons, *from which circumstance* [*it is brought about that the possessions of the church, its own cultivator being occupied on the lands of others, waste away and do not exist as capable of paying their taxes;*] which let your experience not permit to occur.

Chapter IV

Latin source headnote: Lay persons imposing collections upon clerics or churches, or usurping their jurisdiction, if after being warned they do not desist, are excommunicated with their supporters; nevertheless a bishop with the clergy can furnish them subsidies in necessity.

From the Lateran Council.

No less *on account of the sin of those who do it than on account of the loss of those who sustain it, it is known to be exceedingly grave that*, in diverse parts of the world, consuls of cities and rectors, as well as others who appear to have power, frequently impose so many burdens upon churches, [*and*] *so press them with grave and repeated exactions*, that under them the priesthood appears to have been made of worse condition than it was under Pharaoh, who did not have knowledge of the divine law. He indeed, after all others had been subjected to servitude, left *his* priests and their possessions in their former freedom and administered sustenance to them from the public treasury. But these men impose nearly all their burdens upon churches and afflict them with so many forced services that *that* which Jeremiah laments appears to apply to them: "The princess of the provinces has been made tributary." Whether indeed they judge that ditches, expeditions, or any other things are to be carried out for them, they wish nearly all of them to be accomplished from the goods of churches and clerics assigned to the uses of the poor of Christ. They so nullify also the jurisdiction and authority *of bishops and other* prelates that no power appears to have remained to them over their own men. *Concerning this there is cause for grief* [*both*] *for the churches, and there is nonetheless cause for grief also for those very persons who appear wholly to have cast aside the fear of God and reverence for ecclesiastical order*.

Wherefore, under the rigor of anathema, we *more severely* prohibit things of this kind from being done henceforth, unless the bishop and clergy perceive so great a necessity or utility that, without any exaction, they judge that subsidies should be conferred through the churches toward relieving common utilities or necessities where the resources of lay persons do not suffice. But if the consuls or others should commit these things henceforth, and, after being admonished, should *perhaps* be unwilling to desist, let them know that both they and their supporters are subject to excommunication, and let them not be restored to the communion [*of the faithful*] until they have made suitable satisfaction.

Chapter V

Latin source headnote: Causes of blood ought not to be conducted in a church or cemeteries.

Lucius III.

Since, according to evangelical truth, the Church of God ought to be a house of prayer, not a den of robbers or a forum of blood, under threat of anathema we prohibit secular judges from conducting in churches or cemeteries causes in which the shedding of blood and corporal punishment are at issue. For it is absurd and cruel that a judgment of blood be exercised where the protection of refuge is established.

Chapter VI

Latin source headnote: One guilty of a crime who flees to a church is not to be drawn out of it violently, nor ought he any longer, under pretext of the crime committed, to be condemned to death

or to another corporal punishment; nevertheless he is otherwise to be punished lawfully. It fails in the two cases expressed here. This is what it says first. A slave fleeing to a church out of fear of his master is to be restored to his master when the latter swears to his impunity. This is what it says second.

Innocent III, to the Illustrious King of Scotland.

Among other things *which royal providence intimated to us by its letters, it solicitously asked what ought to be done concerning those who, perpetrating crimes, flee to a church so that, through reverence for the sacred place, they may be able to avoid the punishments due. We therefore*, responding to your questions, according to the statutes of the sacred canons and the traditions of the civil laws, have considered that a distinction *in a matter of this kind* is to be made thus: one fleeing to a church exists either as a free man or a slave.

If free, however grave the crimes he has perpetrated, he is not to be drawn violently from the church, nor ought he thence to be condemned to death or to punishment; but the rectors of the churches ought to obtain his limbs and life for him. Nevertheless, concerning that which he did wickedly, he is otherwise to be punished lawfully. And this is true unless he was a public robber or a nocturnal devastator of fields, who, while he besets frequented ways or public roads with the snares of attack, *on account of the magnitude of the crime,* [*since he both impedes common utility and strives altogether to do harm,*] can be drawn from the church without impunity being furnished, according to the canonical sanctions.

But if it was a slave who fled to a church, after his master has furnished an oath to the clerics concerning his impunity, he is compelled to return to the service of his master even unwilling; otherwise he can be seized by the master. *Therefore, dearest son, when anything of these things happens in your kingdom, take care to proceed according to the aforesaid distinction in such a way that the honor and immunity of churches is preserved unharmed and the opportunity for acting wickedly is taken away from men of perverse will.* [*Given at the Lateran.* 1200.]

Chapter VII

Latin source headnote: Clerics ought not to give assistance to the necessities or utilities of cities or other places, even where the resources of lay persons do not suffice, unless the Roman Pontiff is first consulted. This first. Judgments and constitutions issued by lay persons collecting from a church are void by the law itself and acquire no validity at any time. This second. Rectors excommunicated on account of the aforesaid burdens remain excommunicated even after office has been laid down; nonetheless their successors are excommunicated unless they have made satisfaction within a month. This third. It says this for greater explanation and for novices.

The same, in the General Council.

Wishing to provide for ecclesiastical immunity against consuls and rectors of cities, or others, who strive to burden churches and ecclesiastical men with tallages or collections and other exactions, the Lateran Council prohibited presumption of this kind under the rigor of anathema, and commanded transgressors and their supporters to be subject to excommunication until they have furnished suitable satisfaction. But if at any time perhaps a bishop together with the clerics perceives so great a necessity or utility that, without any compulsion, he considers that subsidies should be conferred through the churches toward relieving common utilities or necessities where the resources of lay

persons do not suffice, let the aforesaid lay persons receive them humbly and devoutly with thanksgiving. Nevertheless, on account of the imprudence of certain persons, let the Roman Pontiff first be consulted, whose concern it is to provide for common utilities.

But because not even thus has the malice of certain persons against the Church of God grown quiet, we add that constitutions and judgments which have been promulgated by such persons or at their command are to be held vain and void, never to have force at any time. Moreover, because fraud and deceit ought to patronize no one, let no one be deceived by the vain error that he may sustain anathema during the term of his government as though after it he were not to be compelled to the debt of satisfaction. For we decree that both he himself who has refused to make satisfaction and his successor, unless he has made satisfaction within a month, remain enclosed by ecclesiastical censure until he has made suitable satisfaction, since he who is substituted in honor succeeds to the burden.

Chapter VIII

Latin source headnote: Prelates extorting from subjects more than is due, under pretext of procuration or another service furnished to a legate or another, will restore it and bestow as much upon the poor.

The same, in the same council.

Because very many prelates, in order to furnish procuration or some service to a legate or another, extort more from their subjects than they pay, and, pursuing profits in their losses, seek booty rather than subsidy from subjects, we prohibit this from being done henceforth. But if anyone should perhaps presume to do it, let him both restore the things thus extorted and be compelled to bestow as much upon the poor. But the superior with whom a complaint [*concerning this*] has been lodged, if he has been negligent in the execution of this statute, is to be subject to canonical punishment.

Chapter IX

Latin source headnote: An unconsecrated church in which divine offices are celebrated enjoys immunity.

Gregory IX, to Astoricensis.

The privilege of immunity is taken away by no law from a church in which the divine mysteries are celebrated, although it has not yet been consecrated, because one dedicated to divine observances is to be profaned by no one's rash daring. [*If a church, etc.* (*cf. c.* 10, *On the Consecration of a Church III.* 40.) *Given at the Lateran, on the twelfth day before the Kalends of June.* 1233.]

Chapter X

Latin source headnote: Those who commit offenses in churches or cemeteries under hope of immunity do not enjoy immunity.

The same, to the Archbishops of Toledo and Compostela.

Ecclesiastical immunity—(And below:) Certain persons, hoping to obtain impunity for their excesses through the protection of a church, do not fear to commit homicides and mutilations of limbs in the churches themselves or their cemeteries; which they would by no means have committed unless they believed themselves to be defended by the church to which they flee. (And below:) Since someone

ought to be punished in that in which he offends, and he who commits an offense against the law invokes the aid of the law in vain, we command that you announce publicly that such persons ought not to enjoy the privilege of immunity, of which they make themselves unworthy.

Title L: Lest Clerics or Monks Involve Themselves in Secular Business

Chapter I

Latin source headnote: The council enumerates many secular businesses from which it commands clerics and monks to abstain. And they are fourteen, if they are counted correctly.

From the Council of Mainz.

There are many secular businesses, of which let us touch briefly upon a few, to which all carnal concupiscence pertains. Whatever a man seeks beyond what is just is shameful gain. To receive or even give unjust gifts. To hire someone for payment for some secular gain. To love contentions, lawsuits, or quarrels. To argue in secular courts, except in defense of orphans or widows. To be lessees of secular things or procurators. To be a jester in shameful word or deed, or to love secular jest. To love games of chance. To seek adornment unfitting to one's profession. To wish to live in delights. To pursue gluttony and drunkenness. To have unjust weights or measures. To exercise unjust business.

Nevertheless, just business is not to be forbidden on account of diverse necessities, because we read that the holy Apostles engaged in business, and in the Rule of Blessed Benedict it is commanded that provision be made for those through whose hands the businesses of the monastery are administered. To follow dogs and birds for hunting, and to be engaged in any superfluous causes whatsoever. Behold, things such as these and similar things we altogether forbid to the ministers of the altar of the Lord, as well as to monks, concerning whom the Apostle says: "No one, serving as a soldier for God, involves himself in secular businesses."

Chapter II

Latin source headnote: Clerics ought not to be ministers or procurators of lay persons; but if they act contrary and are detected in fraud, they are not assisted by the Church.

Pope Eugenius, to the Bishop of Lucca.

Moreover, you are to announce publicly to your priests and clerics that they are not to become ministers of lay persons, nor to exist as procurators in their affairs. But if afterward they presume to do this and, on the occasion of that administration, are detected in fraud concerning a pecuniary cause, it is unworthy that they be assisted by the Church, through whom it is established that scandal is generated in the Church.

Chapter III

Latin source headnote: Professed religious who go out to hear laws or medicine, unless they return to the cloister within two months, are excommunicated, and can act as advocate in no cause, and in choir, chapter, and other things they will be last, and without dispensation of the Pope they are not promoted.

Alexander III, in the Council of Tours.

The envy of the ancient enemy does not greatly labor *to cast down the weak members of the Church, but it puts its hand to her more desirable ones and strives also to supplant the elect, Scripture saying: "His foods are the elect." Indeed, it reckons that it accomplishes the fall of many where some more precious member of the Church has been brought down by its cunning. And* hence surely it is that, transfiguring itself in its accustomed manner into an angel of light, under pretext of taking counsel for the bodies of ailing brothers and of treating ecclesiastical businesses more faithfully, it leads certain regulars out of their cloisters to read laws and weigh medical preparations.

Whence, lest *under* occasion of knowledge spiritual men again be involved in worldly actions, *and fail in interior things from the very thing from which they think they provide for others in exterior things, with the assent of the present council* we establish that no persons whatsoever, after a vow of religion and after profession made in some religious place, are to be permitted to go out to read medicine or worldly laws. But if they have gone out and have not returned to their cloister within the space of two months, let them be avoided by all as excommunicates, and let them be heard in no cause if they wish to furnish advocacy. But, having returned, in choir, chapter, refectory, and other things let them [*always*] exist as last among the brothers, and, unless perhaps from the mercy of the Apostolic See, let them lose hope of every promotion.

Chapter IV

Latin source headnote: A cleric who is the general procurator or justiciar of a secular prince is to be deposed, and, if he is a religious, he will be punished more gravely.

The same, in the Lateran Council.

But neither let any cleric presume to exercise the procurations of villages or even secular jurisdictions under any princes and secular men, so that he becomes their justiciar. But if anyone should attempt to act against these things, because, contrary to the teaching of the Apostle saying, "No one, serving as a soldier for God, is to involve himself in secular businesses," he acts secularly, let him be made alien from ecclesiastical ministry, because, neglecting clerical office, he immerses himself in the waves of the world so that he may please the powers [*of the world*]. We decree, however, that he is to be punished more rigorously if any one of the religious should dare to attempt any of the aforesaid things.

Chapter V

Latin source headnote: A cleric exercising a judgment of blood is deposed from office and benefice, and one having the office of a secular provost is excommunicated if after being warned he does not desist.

The same, to the Archbishop of Canterbury.

According to the Council of Toledo, it is not lawful for clerics constituted in sacred orders to conduct a judgment of blood. Whence we prohibit them either from carrying out mutilations of limbs themselves or from judging that they are to be inflicted. But if anyone should do any such thing, let him be deprived of honor and place. We command also, under threat of anathema, that no priest is to have the office of sheriff or secular provost. (And below: [*cf. c.* 7, *On Life and Honorable Conduct III.* 1.])

But if anyone should presume to act contrary to this and, having been admonished, should be unwilling to amend, let him be subject to excommunication.

Chapter VI

Latin source headnote: It is not lawful for clerics or monks to engage in business for the sake of profit. This first. Monks cannot have leased possessions in their own name. This second. A church ought not to be conceded to lay persons under title of lease. This third.

The same, to the Bishop of London.

According to the statutes of our predecessors, under threat of anathema we prohibit monks or clerics from engaging in business for the sake of profit, and monks from having farms in their own name *either* from clerics or *from* lay persons, and lay persons from holding churches at farm.

Chapter VII

Latin source headnote: Incorrigible monks are expelled from a monastery, and the monastery will be reformed with brothers of another order if it cannot be reformed with monks of the same order.

The same, to the same.

It has been reported *to our ears* that the monks of H. live secularly and corrupt others by their example. And therefore we command that, with appeal removed, you compel them to observance of the *monastic* rule, or, if with rash daring they resist you, after they have been expelled, introduce into it brothers of another order if the aforesaid monastery cannot be reformed in its own order, so that the just may eat the labors of the impious and those men at last, covered with shame, may return to the observance of their order.

Chapter VIII

Latin source headnote: Clerics in sacred orders are to be compelled, through subtraction of benefices, to desist from exercise of the office of notary.

Innocent III, to the Bishop of Ascoli.

As we received from your report, *when our venerable brother the Bishop of Ostia, formerly passing through your city, gave you a command that you bind with the bond of excommunication the priests, deacons* [*and subdeacons*] *whom he found there indiscriminately exercising the office of notary, and those who received public instruments from them, you, although you did this, afterward* [*nevertheless*] *dissembled concerning the subdeacons from the command of the said bishop, until you considered that the Apostolic See should be consulted as to how you ought to proceed against them and others constituted in sacred orders. Wherefore* we command *your fraternity by apostolic writings* that, with appeal set aside, through subtraction of [*their*] benefices you forbid clerics constituted in sacred orders the office of notary. [*Given at the Lateran, on the sixth day before the Kalends of December, in the fourteenth year of our pontificate.* 1211.]

Chapter IX

Latin source headnote: A cleric ought neither to dictate nor pronounce a sentence of blood, nor to exercise anything else through which there is a tendency toward vengeance of blood, nor ought he to furnish assistance in a vulgar purgation.

The same, in the General Council.

Let no cleric dictate or pronounce a sentence of blood; neither let him exercise vengeance of blood nor be present where it is exercised. But if anyone on the occasion of a statute of this kind should presume to inflict any loss upon churches or ecclesiastical persons, let him be restrained through ecclesiastical censure. Nor let any cleric dictate or write letters to be sent for vengeance of blood; whence in the courts of princes let this responsibility be committed not to clerics but to lay persons. Likewise, let no cleric be placed over routiers or crossbowmen, or men of blood of this kind; nor let a subdeacon, deacon, or priest exercise any art of surgery which brings burning or cutting. Nor let anyone bestow a rite of any blessing or consecration upon a purgation by boiling or cold water or glowing iron, the prohibitions concerning single combats or duels previously promulgated nevertheless remaining intact.

Chapter X

Latin source headnote: The constitution of the Council of Tours, punishing religious who hear laws or medicine, is a canon of a sentence incurred by the act itself, and those falling under it ought to be punished by the ordinaries. This first. Second, it extends the said constitution to those having dignities and personatus, and to priests.

Honorius III.

Upon the watchtower—(And below: [*cf. c.* 5, *On Masters V.* 5.]) *Indeed, although the grace of the other sciences is deceitful and their beauty also vain, since the grain of the elect and the wine bringing forth virgins, according to the Prophet, is good above all things and is beautiful, nevertheless, because certain regulars, rejecting cloistral silence and the law of the Lord, converting souls and giving wisdom to little children, which they ought to have loved above gold and topaz, go away after the footprints of the flocks and turn themselves unlawfully to embrace the handmaids who desire the applause of peoples,* against religious persons going out from cloisters to hear laws or medicine, our predecessor *of happy memory* Alexander formerly established in the Council of Tours that, unless they returned to the cloister within the space of two months, they were to be avoided by all as excommunicates and were to be heard in no cause if they wished to furnish advocacy. But, having returned, in choir, refectory, chapter, and other things let them exist as last among the brothers and, unless perhaps from the mercy of the Apostolic See, let them lose hope of every promotion.

But because some of such persons, on account of the diverse opinions of certain persons, assumed something of an excuse, we, wishing that *such persons* henceforth incur by the act itself a sentence of excommunication, by strictly commanding order that such persons, *with the obstacle of appeal removed*, be publicly announced as excommunicated *and* liable to the aforesaid punishments, both by the diocesans and their chapters and *also* by the other bishops in whose dioceses they study in this manner. [But because we desire the study of theology to be enlarged, so that, after the place of its tent has been enlarged, it may make its cords longer, so that the Catholic faith may be surrounded by an impregnable wall of warriors through whom it may be able to resist those ascending from the opposite side, we wish and command that this be extended to archdeacons, deans, plebani, provosts, cantors, and other clerics having personatus, as well as *also* to priests, unless they desist from these things within the aforesaid space, and that, with appeal set aside, it be firmly observed. *For since there*

are many, etc. Given at Viterbo, on the tenth day before the Kalends of December, in the fourth year of our pontificate. 1219.]

Book IV

Compilation of the Decretals of Lord Pope Gregory IX

Book Four

Title I: On Betrothals and Marriages

Chapter I

Latin source headnote: Marriage is contracted by consent alone, nor is it invalidated if the custom of the homeland is not observed.

From the Council of Tribur.

A certain *noble man* from Francia took a noble woman from Saxony as wife according to the law of the Saxons, *and kept her for many years and begot sons from her*. But because the Saxons and the Frankish people do not use the same laws, he alleged that he had not betrothed her according to his own law, that is, the law of the Franks, *or received her or endowed her*, and, dismissing her, he brought in another. Concerning this the holy synod determined that the transgressor of the evangelical law is to be subjected to penance, separated from the second wife, and compelled to return to the first.

Chapter II

Latin source headnote: Betrothals for the future are dissolved if the betrothed dissolve them, even if they were sworn.

Innocent III, to the Bishop of Exeter.

Furthermore, those who purely and without any condition gave their pledge [*or*] *made an oath* concerning contracting marriage are to be admonished *and more diligently exhorted*, and by every means induced to observe the pledge furnished *or the oath made, and to join themselves as they promised*. But if they are unwilling to admit one another, lest perhaps something worse happen from it—namely, that he take one whom he [*always*] hates—it appears that, after the manner of those who contract a partnership *by oath or* by the interposition of a pledge and afterward remit the same to one another, this can be tolerated with patience.

Chapter III

Latin source headnote: If one older than seven years took as wife one younger than seven years and conducted her to his house, the justice of public honesty arises from such a contract. This is what it says by adhering to the letter. Panormitanus.

Pope Eugenius.

That *young man* who took a girl not yet seven years old, although age opposed it, nevertheless from human frailty perhaps attempted what he could not complete. Therefore, because in those things which are doubtful we ought to hold what we consider more certain, both on account of the honesty

of the Church, since she is said to have been his wife, and on account of the aforesaid doubt, we command *you* to separate from him the cousin of the girl whom he afterward took.

Chapter IV

Latin source headnote: From betrothals contracted with a blood relative arises the justice of public honesty.

Alexander III, to the Bishop of Pavia.

It came to the hearing of our apostolate that, when H. *Albericus*, a citizen of Pavia, wished to give his daughter as wife to a certain one of the sons of L., he swore that, if he *to whom she was betrothed* could not have her because some eventuality intervened, he would join the same *girl* in marriage to another son whom L. had begotten of another wife. But after betrothals had been contracted by the first son, certain persons, *approaching the church*, affirmed with oaths interposed that consanguinity existed between them. And therefore the aforesaid H. strives to give the same *woman* to the other son, as he swore. But because it is written that a brother cannot have his brother's betrothed, we command *your discretion by apostolic writings, instructing* that you not permit him to fulfill his purpose, *which opposes canonical reason*, but, after admonition has been given, compel him by ecclesiastical rigor to do penance for the unlawful oath.

Chapter V

Latin source headnote: If one betrothed for the future transfers himself to distant places before union, the betrothed woman freely contracts with another; nevertheless, if it stood through her that the marriage was not perfected, penance is imposed upon her.

The same, to the Archbishop of Palermo.

Concerning those who, after furnishing an oath, promise that they will take certain women and afterward, without the women's knowledge, leave the land, transferring themselves to other regions, we wish this to become known to you: that it will be free for the women themselves, if the deed has not proceeded further, to transfer themselves to other vows, yet after receiving penance for perjury if it stood through them that the marriage was not consummated. *But if, etc.* (*cf. c.* 3, *On Conditions Appended IV.* 3.)

Chapter VI

Latin source headnote: Not every violence impedes the contract of marriage. This is what it says as to the title.

The same, to the Bishop of Padua.

Concerning a woman who was unwillingly delivered to and detained by a man, since there is a difference between one kind of force and another, and you thereafter expressed nothing certain to us as to whether consent afterward intervened, we can answer you nothing certain concerning it. *But those, etc.* (*cf. c.* 3, *On a Marriage Contracted IV.* 16.)

Chapter VII

Latin source headnote: If persons fit for marriage contract through obscure words, they are held to follow the common understanding of the words.

The same, to the Archbishop of Canterbury.

From the letters *which you transmitted concerning the matrimonial cause of a certain young man named R. and Mary, daughter of Gilbert of Saint-Léger, the solicitude which you observed in the examination of that business became known to us. But because, with the parties absent, we could not investigate the truth fully, nor remit the cause itself to you, from whom the woman's party is known to have appealed to our hearing, we considered that it should be committed to our venerable brothers the Bishops of Winchester, Hereford, and Bath. And therefore we command your fraternity by apostolic writings, instructing that, when the parties have been summoned by them, you compel the parties to approach their presence and, with contradiction and appeal ceasing, inviolably to observe what they shall judge.*

But concerning that which you consulted *near the end of the letters*—what ought to be observed when betrothals are contracted between certain persons and one does not understand what the other proposes—we respond that the judge must examine whether those about to contract marriage are fit to do so in knowledge and age. Once this is known, if one did not understand what the other proposed, recourse is to be had to the common understanding of the word, and each is to be compelled to retain the words uttered in that sense which they are accustomed to produce in those understanding correctly. *But as to what you asked—whether deference ought to be given to an appeal where, under its pretext, adultery or another crime is known to be about to be committed—we respond briefly to your consultation that, where it would be notorious that adultery or another crime would be committed if deference were given to an appeal interposed, we would not wish deference to be given. For we do not wish to furnish to anyone material for incest or adultery.*

Chapter VIII

Latin source headnote: Between a betrothed woman and the blood relatives of the betrothed man arises an impediment of public honesty, impeding and dissolving a marriage to be contracted between them.

The same, to the Bishop of Vigevano.

No blood relative can in any way join to himself in marriage the betrothed woman of another, especially if she is near marriageable age.

Chapter IX

Latin source headnote: If a man and a woman promise one another that from that time they will hold themselves as spouses, a marriage of the present has been contracted. This is what it says, and it is a notable case.

The same, to the Abbots of Saint Edmund and Demer.

It was intimated to us on the part of the woman C. that Andrew *before a certain priest and deacon, and very many others, clerics as well as lay persons, summoned for this purpose*, furnished her an oath that from that time he would hold her as wife and preserve fidelity to her as to his wife. She likewise swore to the same Andrew that she would have him as husband and preserve fidelity to him as to her own

man. This having been done, *living together for a long time in the same house, they begot children for themselves. But as time proceeded,* the aforesaid A., *contrary to the oath furnished,* left her *and the children begotten of her and withdrew from living together with them*.

Therefore, because it is lawful for no one to dismiss his wife without manifest cause of fornication, and even then he ought either to reconcile her to himself [*or*] to remain continent while she is living, *nor ought we to sustain that the aforesaid Andrew violate the religious obligation of the oath furnished, we command your discretion by apostolic writings, instructing* that, *after the truth of the matter has been more diligently investigated, if you find it to be so as was said above,* after the woman brought in, *whom he has,* has first been dismissed, you compel the same *Andrew,* that, *taking counsel for his salvation,* he return to his wife and treat her with marital affection, *and take care to expiate his guilt by worthy penance,* by ecclesiastical censure after admonition has been given. *But if perhaps he should be unwilling to acquiesce in your admonition, with every occasion and appeal removed, bind him and the woman brought in with the bond of excommunication, and command that they be more carefully avoided by all as excommunicates until worthy satisfaction.*

Chapter X

Latin source headnote: He who swore to contract with a certain woman, if no impediment exists, is compelled by ecclesiastical censure to contract.

The same, to the Bishop of Poitiers.

We received from the letters *of our venerable brother,* Silvanus the bishop, that, when two noble men of his episcopate, namely G. of Monstra and B. *of Mauritania,* had sons and daughters who were approaching puberty, *and in hope of reconciling peace between them thus* agreed with one another that they would join them to one another in *mutual* marriages. And both the fathers and the children promised under oath that they would do this; among them, indeed, G., with the father consenting, swore *once and again* that he would take the daughter of the other as wife. When he wished to pass to other vows, the bishop wished to compel him to fulfill what he had sworn. *He appealed to our hearing, and, although the other party sent its messenger to us, he neither came nor transmitted any representative for himself.*

Therefore, because it is dangerous for the aforesaid G. to act against his oath, we command your fraternity *by apostolic writings, instructing* that, *when you have been requested concerning this, you summon each party before your presence and, after the arguments on each side have been more fully heard and discussed,* if this is established to you, admonish him and, if he does not acquiesce in the admonitions, compel him by ecclesiastical censure to receive her as wife and treat her with marital affection, unless a reasonable cause stands in the way. *But if he should wish to advance a reasonable cause, hear it with every diligence and care, and decide it by a canonical conclusion with every appeal ceasing. Moreover, if, after being lawfully admonished, he should contemn obeying your judgment, bind him and his father, if the father should presume to support him in his malice, with the bond of excommunication, and prohibit all divine offices, except the baptism of little children and the penances of the dying, from being celebrated throughout all their land.*

Chapter XI

Latin source headnote: By ecclesiastical censure a father is compelled to restore to his son the latter's wife, whom he unjustly detained or detains.

The same, to the Archbishops, Bishops, and Other Prelates Constituted throughout England.

It is not unknown to you, as we judge, how *Henry, the illustrious* King of the English, on account of the discord which, *as sins demanded,* has arisen between him and his sons, detains their wives [*namely, the daughters of our dearest son in Christ Louis, the illustrious King of the Franks*], *for whose restoration to them* [*the same*] *King of the Franks* [*and the sons of the aforesaid King of the English*] *and his sons-in-law offered solicitous prayers to us*. We therefore, [*more earnestly*] considering that it is just and honorable that husbands should seek their wives, *and wishing with ready spirit to acquiesce in the prayers of the same* [*King of the Franks and his sons-in-law not only in those things which we are held to effect from the obligation of office, but also*] *in all things which do not disagree with justice, admonished the aforesaid King of England earnestly enough and attentively, and gave him a command that, at the admonition of* [*our venerable brothers*] *the Archbishop of Tarentaise and the Bishop of Clermont, and of* [*his beloved son*] *the Prior of the Carthusians, or in his place the Prior of Mont-Dieu if he cannot be present, or of two of these if three cannot be present, he not postpone restoring the wives to his sons within forty days after receipt of our letters. But if he does not restore them to their husbands within the aforesaid term, by apostolic authority we command that the whole province within which they are detained, and to which they are transferred, for as long as they are there and until they are restored to their husbands, cease from all divine offices except the baptism of little children and the penance of the dying. Hence it is that by apostolic writings, instructing,* we command [*and by commanding instruct*] all of you that you solicitously admonish the same King *of the English* to restore them *and induce him by exhortations, setting before him that it is no less expedient for him to restore them than for their husbands to receive them*.

And if, according to *the command and* your admonition, he does not restore their wives to his sons within a certain term, from then on, in whichever of your provinces they are detained or [*to which*] they are transferred, for as long as they are there, celebrate no divine offices except the baptism of little children and the penances of the dying, nor permit them in any way to be celebrated, *with every* [*contradiction concerning these things and*] *appeal ceasing; knowing for certain that, if any should attempt to act against our interdict, which we do not believe, by the Lord's authority they will carry away the punishment due for their rashness and transgression.*

Chapter XII

Latin source headnote: The statement of one person asserting an impediment impedes an unsworn marriage from being contracted.

The same, to the Bishop of Saint Agatha.

Furthermore, concerning the woman who is sought by a man, whose blood relative proposes that he sinned with her but refuses publicly to confess this on account of the woman's fear and power, we respond *to your providence* in this manner: that, unless an oath had intervened, you are strictly to prohibit the marriage itself from being made, lest something worse occur from it.

Chapter XIII

Latin source headnote: If a woman unwillingly contracts with someone and does not afterward consent to him, the marriage holds if she afterward marries another. Thus it is commonly summarized. And according to this understanding this would be an open case that a marriage contracted through fear is void by the law itself. Nevertheless, this is not clearly gathered from the letter.

The same, to the Procurator and Canons of Sora.

Coming to the Apostolic See, Mariota, *bearer of the present letters*, showed to us by a suppliant *to us* intimation that, *while she was constituted in adolescence*, she loved a certain young man [*named E.*] to such an extent that each of them *between themselves* furnished an oath concerning contracting marriage under the testimony of three persons. Her parents, ignorant of this, delivered her, unwilling and protesting, as wife to a *certain* other man, whom she so abhorred that she by no means permitted herself to be known by him. And when she publicly confessed that she had been known by and sworn to the former man, the Bishop of Sora, *who then existed, caused them to come before his presence, and*, it being known *and proved* that so close a line of consanguinity existed between them *that they could not and ought not by law to be joined together*, separated them from one another.

Moreover, when the cause itself was being treated and she was unwilling to consent to the man to whom she had been delivered by her parents, he took another as wife, and she publicly married in the sight of the Church a certain *man* named T. At last, when she had begotten a son by him, the father of T., *seeking an occasion for obtaining a judicial separation*, objected to her that she could not have his son as husband because she had first been betrothed to the other man, who is *now* dead. *But because we did not apply faith to his assertion, as neither ought we to have done, nor could we pass this over in silence, we considered that she should be remitted to you, and we command your discretion by apostolic writings, instructing* that, *after the truth of this matter has been more fully ascertained*, if you find that the aforesaid woman was separated from the former man by judgment of the Church, was taken as wife by the same T. without contradiction of the Church, and that the man to whom she was joined by her parents *unwilling and resisting* has departed from the present life, after admonition has been given, compel the aforesaid T. to receive the aforesaid Mariota *with the occasion set aside*, and to take care *to love her as his wife and* treat her with marital affection. Otherwise, subject him, the woman brought in, and *also* his father, if they resist this, to excommunication, *and cause the sentence itself to be inviolably observed until worthy satisfaction*.

Chapter XIV

Latin source headnote: If it is feared that violence will be inflicted upon a girl concerning whose marriage there is litigation, the judge ought to provide for her a safe and honorable place until the cause is terminated. This is what it says, and it is a text very capable of being alleged.

The same, to the Bishop of Pavia.

Since consent has no place where fear or coercion intervenes, it is necessary that, where someone's assent is required, the material of coercion be repelled. But marriage is contracted by consent alone, and, where inquiry is made concerning it, the person whose intention is to be investigated ought to enjoy full security, lest through fear that person say that what is hated is pleasing, and there follow the outcome which is accustomed to proceed from unwilling nuptials. Wherefore we command *your fraternity by apostolic writings, instructing* that you cause the girl, concerning whose marriage *between your citizens the Siderii and the Canes* a question is debated, to be kept honorably in the house in which *you placed her in such a way that* she need fear nothing, until the aforesaid cause has been terminated *by a canonical conclusion*, and the sentence can be put into execution without anyone's contradiction.

Chapter XV

Latin source headnote: Betrothals for the future, if intercourse followed, are not dissolved by betrothals of the present; otherwise the betrothals of the present hold, unless they were contracted through fear which could have befallen a steadfast man.

The same.

Coming to us, G., *bearer of the present letters*, showed to us by his report that he received a certain woman in his house, by whom he had offspring, and to whom he furnished a pledge before many persons that he would take her as wife. Meanwhile, however, when he spent the night at the house of his neighbor, the latter's daughter lay with him that night; finding them together in one bed, the girl's father compelled him to betroth her through words of the present. *Recently constituted in our presence, he consulted us as to which one he ought rather to adhere to. But because it by no means became known to us whether he knew the first woman after the pledge was furnished*, we therefore command that you *diligently inquire into the truth of the matter, and*, if you find that he knew the first woman after furnishing the pledge, cause him to remain with her; otherwise, cause him to adhere as wife to the second, unless he betrothed her after being coerced by fear which could befall a steadfast man.

Chapter XVI

Latin source headnote: He who swore to contract with a certain woman, if he wishes to enter religion, ought first to contract so that the oath may be observed, and before carnal union he will be able to enter a monastery.

The same, to the Bishop of Exeter.

Committed—(And below:) Your fraternity signified to us that a certain *learned and noble man, when the paternal inheritance devolved upon him*, gave a *noble* woman a pledge concerning contracting marriage *in the presence of certain persons*, and affirmed by an oath furnished *upon the sacrosanct Gospels* that within two years he would contract with her through words of the present. But now, led by a private law, he sighs to pass to the fruit of a better life, *and, consulting your prudence concerning this, suspects that before the marriage has been contracted he can lawfully pass to the habit of monastic religion, because, if he had contracted, he could, with her unwilling, pass within two months to the religion of a stricter life, according to the statutes of the ancient canons renewed by our constitution. Therefore, because your fraternity considered that we should be consulted concerning this*, we respond to your fraternity in this manner: it is safer for him, with the religious obligation of the oath observed, first to contract and afterward, if he chooses, to migrate to religion, provided that carnal union is not known to have intervened after the *first* betrothal.

Chapter XVII

Latin source headnote: One who swore to contract with a certain person ought rather to be admonished than compelled to contract. This is what it says by adhering to the letter.

Lucius III, to the Bishop of Rapallo.

Your fraternity asked us by what censure a woman ought to be compelled who, neglecting the religious obligation of an oath, refuses to marry him whom she affirmed by an oath interposed that she would marry. *You asked also whether she whose husband polluted the bed of her mother can, since she desires to become a mother, pass to other vows while her husband is living.* To this we respond *to you* briefly that, *since*

marriages ought by law to be free, the woman who swore that she would marry is to be admonished rather than compelled, *especially* since coercions [*of this kind*] are accustomed frequently to have difficult outcomes. *Indeed, she whose husband committed adultery and incest with her mother ought neither to be joined carnally to her husband nor, while he is living, to enter marriage with another.*

Chapter XVIII

Latin source headnote: Pendency of litigation concerning a marriage does not impede a second marriage from being contracted if the first was void.

Urban III.

Since in the Apostolic *See, over which, although undeserving, we preside, resides the mastery of all ecclesiastical discipline, it is worthy and consonant with reason that, as often as any doubt arises concerning a business of the Church, recourse be had to the judgment of its deliberation.* We understood *indeed* that, when a matrimonial question between the bailiff of N. and his wife was being treated *before you, after witnesses had been produced and their attestations discussed by diligent examination*, before publication of the testimony the *same* bailiff, returning to his own region, publicly alleged that a sentence of separation between him and his wife had [*been*] promulgated by judgment of the Church; and thus, after falsehood had been suggested *to all*, he presumed to join to himself a certain *other woman* ignorant of the deed. But afterward, when letters *from the Apostolic See* had been obtained concerning the question of the prior marriage, the delegated judges pronounced a sentence of separation.

But because you assert that the bailiff and the woman whom he brought in consented to one another while the litigation concerning the former wife was pending, *your fraternity considered that we should be consulted as to whether such persons are to be admitted to marriage. We therefore, by authority of the present letters*, respond to your consultation in this manner: after suitable penance has been imposed upon the man and carnal intercourse forbidden during the time *of that* penance, afterward they can remain in marital union. [*But concerning, etc.; cf. c.* 5, *On Conditions Appended IV.* 5.]

Chapter XIX

Latin source headnote: A wife not made certain of the death of her husband cannot contract, although she does not know what has become of a husband who has been absent for a long time.

Clement III, to the Bishop of Zaragoza.

Placed in our presence, you asked *of us* what is to be done *by you* concerning *certain* women *constituted in your diocese* who, *although* they have now waited beyond seven years for their husbands absent on account of captivity or pilgrimage, cannot be made certain concerning their life or death, although they have applied diligent solicitude concerning this, and, on account of youthful age or the frailty of the flesh, cannot remain continent, and petition to be joined to others in marriage. *But since the Apostle says, "A woman is bound to her husband for as long as her husband lives,"* we therefore respond to your consultation in this manner: however great a number of years they remain thus, while their husbands live they cannot canonically pass over to union with others, nor are *you* by authority of the Church to permit *them* to contract until they receive certain report of the death of their husbands. [*Given at the Lateran.*]

Chapter XX

Latin source headnote: The contract of marriage with a female sinner wishing to correct herself profits toward remission of sins.

The same.

Among the works of charity *which are set before us by authority of sacred Scripture to be imitated, as evangelical authority testifies*, it is not the least to call one who errs back from the path of her error, *and especially to invite women living voluptuously and admitting indiscriminately any persons whatsoever to intercourse of the flesh to the lawful fellowship of the bed, so that they may live chastely. Therefore, considering this, by apostolic authority* we establish that, for all who draw public women from the brothel and take them as wives, what they do shall profit toward remission of sins. [*Given at Rome, at Saint Peter's, on the third day before the Kalends of May, in the first year of our pontificate.* 1198.]

Chapter XXI

Latin source headnote: A marriage contracted by force acquires validity through voluntary cohabitation. This is what it says, and it is alleged daily.

The same.

To that which you intimated *to us* by your letters concerning a certain female parishioner of yours whom her stepfather joined matrimonially to a certain German, we respond in this manner: although, when she was *still* eleven years old, she had at the beginning been delivered to him unwilling and resisting, nevertheless, because afterward, by living with him for a year and a half, she appears to have consented, she is to be compelled to return to him. Nor henceforth are witnesses to be received if the aforesaid woman should name any to be produced in order to prove that she did not consent to him, since the delay of so much time excludes proof of this kind. We therefore command that on this account you not omit to compel *by ecclesiastical censure, with appeal removed*, each to treat the other with marital affection, unless perhaps they wish together to pass to religion, with penance enjoined upon them because each passed to alien and unlawful sexual unions. [*Given at the Lateran.*]

Chapter XXII

Latin source headnote: Betrothals for the future, even if sworn, are dissolved by second betrothals of the present, but not by second betrothals for the future.

Innocent III, to the Bishop of Ferentino.

As we received from the letters of your fraternity, when L., your parishioner, had affirmed by his own oath into the hands of the father of the woman P. that he would take P. as wife, her father swearing that he would deliver her to him as wife, and it did not stand through the man, but rather through the woman, that matrimonial solemnity did not follow between them, after four or five years had later elapsed, the same L. betrothed the woman E. through words of the present, as her blood relatives assert, *on account of which the brother of the aforesaid P. lodged his question in your presence. But because you ask to be instructed by our response as to what is to be done concerning these things*, we respond to your petition in this manner: if it is established to you that the same L. betrothed the woman *P.* through words of the future, but E. through words of the present, after suitable penance has been imposed upon him because he made the first pledge void—unless perhaps in his oath he fixed a

certain term within which he would take the said P. as wife, and it was not owing to him that he did not consummate the marriage at the appointed term—judge the marriage contracted in the second place lawful and compel him *by ecclesiastical rigor, if there is need,* to observe it, *unless perhaps something else should stand in the way which ought to impede him*.

But if perhaps he contracted betrothals with each through words of the future, compel him to observe the first oath, just as it was lawfully made, being about to enjoin penance upon him for the second. But if these things are not fully established *to you*, continue to take cognizance of the cause until you are sufficiently instructed concerning them. *For what is contained in the attestations which you sent to the Apostolic See concerning co-parenthood does not pertain to the cause, since neither of the contracting persons is that person through whose mediation co-parenthood was contracted between their parents.* [*Given at the Lateran, on the fifth day before the Kalends of March, in the first year of our pontificate.* 1198.]

Chapter XXIII

Latin source headnote: A mute and a deaf person, and all who are not prohibited, can contract marriage.

The same, to the Archbishop of Arles.

Since at the Apostolic See, *over which, although undeserving, we preside, resides the magistracy of all ecclesiastical discipline, it is worthy and consonant with reason that, as often as any doubt arises concerning various and diverse businesses, recourse be had to the judgment of that see which, by the Lord's ordering, merited to obtain primacy among all churches*. Indeed, you consulted us *through your messengers and letters* as to whether a mute and a deaf person can be joined matrimonially to another. To this we respond *to your fraternity* in this manner: since the edict concerning contracting marriage is prohibitory, so that whoever is not prohibited is consequently admitted, and the consent alone of those men and women concerning whose joining there is litigation suffices for marriage, it appears that, if such a person wishes to contract, it neither can nor ought to be denied to him, since what he cannot declare by words he can declare by signs. [*Given at Rome, at Saint Peter's, on the Ides of July.* 1198.]

Chapter XXIV

Latin source headnote: An insane person cannot contract marriage.

The same, to the Bishop of Vercelli.

The beloved son R., *a knight of Alessandria*, proposed *before us* that he joined his daughter *Rufina* matrimonially to a certain *Opizo Lancavecla, ignorant that Opizo was insane. Whence he humbly petitioned us that we deign to take counsel for both him and his daughter.* But since the same woman cannot remain with the man himself, who labors under continual madness, and lawful consent could not intervene on account of the derangement of madness, we command *your fraternity by apostolic writings* that, *after the truth has been more fully investigated*, if you know the matter to be so, you take care to separate the aforesaid persons from one another *with the subterfuge of appeal removed*. [*Given at Rome, at Saint Peter's, on the fifth day before the Kalends of January.* 1205.]

Chapter XXV

Latin source headnote: Marriage is contracted by lawful consent alone, but words are required as to proof; and understand: or other equivalent signs. This is what it says according to the understanding

which Panormitanus holds.

The same, to the Bishop of Brescia.

To your fraternity—(And below: [*cf. c.* 10, *On Him Who Knew IV.* 13.]) You asked *in addition to be instructed* whether marriage is contracted from words alone and from which words, *since it is doubted by some that a spiritual bond is contracted by words alone*. We therefore respond to your inquiry in this manner: in truth marriage is contracted through the lawful consent of a man and a woman; but, as regards the Church, words expressing present consent are necessary. For the deaf and mute can contract marriage through mutual consent without words, and children before the lawful years do not contract by words alone, since they are understood not at all to consent. [*Given at Rome, etc.* 1206.]

Chapter XXVI

Latin source headnote: If one of the contracting persons uses doubtful words with the intention of deceiving the woman, and afterward knows her carnally, judgment is given for marriage in the judicial forum; it is otherwise in the penitential forum. This is what it says according to the true and common understanding.

The same.

Your fraternity considered that we should be consulted—(And below: [*cf. c.* 7, *On Consanguinity and Affinity IV.* 14.]) Consecutively, *however*, you asked [*that*], when a certain man could not otherwise induce a certain woman to mingle carnally with him unless he betrothed her, with no solemnity applied or anyone present, he said to her, "John betroths you," although he was not called John but pretended that he was called John, not believing there to be marriage because he was not called by this name and did not have the purpose of contracting but only of accomplishing carnal union: whether marriage was celebrated between the aforesaid persons, since the woman consented *and consents* to him, and he dissented and dissents, and did nothing else except [*that which*] was expressed above, apart from knowing her.

Concerning this we respond to you that, since the aforesaid man betrothed the aforesaid woman in his own person and under an alien name by which he then pretended that he was called, and carnal union followed between them, it perhaps appears that there is a presumption for marriage, unless you had written to us expressly that he neither purposed nor consents to take her as wife—which we do not see how was established to you. But we, rescribing what the law is, say [*this*]: that, if the matter is thus—namely, that he did not purpose to take her as wife and never consented to the aforesaid person—marriage ought not to be adjudged from that deed, since neither the substance of the conjugal contract nor [*even*] the form of contracting marriage can be found in it, because on the one side only fraud was present and consent was wholly absent, without which the other things cannot perfect a conjugal covenant. [*Third, you asked, etc.; cf. c.* 19, *On Homicide V.* 12. *Given at the Lateran, on the Ides of February, in the fourteenth year of our pontificate.* 1212.]

Chapter XXVII

Latin source headnote: At the denunciation of one honorable man who reports consanguinity and gives information concerning reputation or scandal, a marriage is impeded from being contracted.

The same, to the Bishop of Beauvais.

When in your diocese—(And below: [*cf. c.* 36, *On Tithes III.* 30.]) Indeed, because it sometimes happens that, when certain persons wish to contract marriage, banns, to use your words, have been issued in the churches *according to the custom of the Gallican Church,* and no objector publicly appears, although report relates a private impediment of kinship, while oaths of the elders concerning their relationship are offered on the part of the contracting persons so that material for suspicion may be removed, you asked what is to be done by you in cases of this kind.

To this we respond in this manner: if a grave person to whom faith is to be applied denounces to you that those who are to be joined in marriage touch one another by kinship, and gives information concerning report or scandal, or if you can even be made certain immediately through yourself, not only ought you not to receive the oaths of the parents spontaneously offered, but you ought also to compel those who thus strive to contract, if they cannot be induced after being admonished, either [*to*] desist from such a contract or, according to the judgment of your discretion, to furnish oaths of their relatives against report of this kind. Otherwise, if the person denouncing does not exist as such as we have said, or cannot give information concerning report or scandal, you will be able to admonish those contracting to desist, but not compel them. [*But if, etc.; cf. c.* 6, *Who May Accuse a Marriage IV.* 18. *Given at the Lateran, on the fourth day before the Kalends of November, in the fifteenth year of our pontificate.* 1212.]

Chapter XXVIII

Latin source headnote: A woman who denies that she consented to marriage is not believed when the husband proves the contrary; it is otherwise if she proves that she consented through fear which can befall a steadfast man.

Honorius III, to the Bishop of Bergen.

We respond briefly to your consultation that women who *according to custom* come with betrothed men to the doors of the church to be blessed, and there, protesting, affirm that they never consented to marriage with them, ought not to be heard when the betrothed men lawfully prove the contrary, since the simple assertion of the women ought not to prevail over lawful and suitable witnesses. Indeed, a hearing is not immediately to be denied to those who, after receiving the blessing, soon flee from the betrothed men before carnal union has followed, asserting that they never truly consented to them but, compelled by fear inflicted, uttered words of consent although they dissented in intention. Rather, inquiry is to be made with diligence concerning the fear inflicted; and, if such fear is found to have been inflicted as could befall a steadfast man, they will not undeservedly be heard.

Chapter XXIX

Latin source headnote: In marriages and betrothals there ought to be freedom; whence in them a promise of a penalty does not bind.

Gregory IX.

The woman Gemma explained to us that, when T., her daughter, contracted marriage with C., B. of Alferio, on the occasion that betrothals were contracted between his son P. and the aforesaid girl while they were constituted under seven years, strives to extort from her the penalty placed in the

stipulation, to be paid by the party who should contravene. Therefore, since marriages ought to be free and for this reason such a stipulation is deservedly to be disapproved on account of the interposition of a penalty, we command that, if it is so, you compel the same B. by ecclesiastical censure to desist from extortion of the aforesaid penalty.

Chapter XXX

Latin source headnote: Betrothals for the future pass into marriage through carnal union following, but not through an attempt at carnal union alone. This is what it says with the final chapter below under the same title.

The same, to the Bishop of Le Mans.

He who gave a pledge to the woman M. concerning contracting marriage, with carnal union following, even if in the face of the Church he takes another and knows her, is held to return to the first; because, although the first marriage appears to be presumed, nevertheless proof against a presumption of this kind is not to be admitted. From this it follows that the marriage which afterward followed in fact is considered neither a true marriage nor any marriage.

Chapter XXXI

Latin source headnote: Betrothals of the present are not dissolved by a following marriage, even one consummated by carnal union; but betrothals for the future, even if sworn, are dissolved by following betrothals of the present.

The same.

If lawful consent of the present intervenes between a man and a woman so that one receives the other by mutual consent expressed in customary words, each saying, "I receive you as mine," and, "I receive you as mine," or other words expressing present consent, whether an oath has been interposed or not, it is not lawful for either to pass to other vows. But if either does so, the second marriage contracted in fact, even if carnal union followed, ought to be separated, and the first remain in its firmness.

But if only a promise of the future was made between them, each saying to the other, "I will receive you as mine," and, "I will receive you as mine," or similar words, if another should betroth that woman through words of the present, even if an oath concerning the future, as we have said, intervened between her and the first, the second marriage cannot be separated in view of a betrothal of this kind; but penance is to be enjoined upon them for violation of the pledge.

Chapter XXXII

Latin source headnote: An attempt at intercourse does not cause betrothals for the future to pass into marriage.

The same.

A young man who, although he often attempted it, did not know carnally the woman betrothed to him through words of the future, and afterward contracted with another through words of the present, ought to have as wife not the first, with whom there was neither a true marriage from the form of the contract nor a presumed marriage, since the attempt had no effect, but the second.

Title II: On the Betrothal of Minors

Chapter I

Latin source headnote: A father contracts betrothals for an underage son, but not for one of age unless he consents.

Hormisdas, to Bishop Eusebius.

Your fraternity asked us concerning an adult son for whom the father wishes to contract a marriage, whether he can do it without the will of the adult son. To this we say that, if the son does not consent in any way, it cannot be done; but a father can deliver in marriage to whom he wishes a son not yet adult, whose will cannot be discerned. And after the son has reached perfect age, he ought altogether to fulfill this.

Chapter II

Latin source headnote: Minors, whether both or one, ought not to be joined except for the good of peace.

Pope Nicholas.

Where there is no consent—(And below:) *By authority of this decree, therefore,* we more strictly prohibit any persons *henceforth* from being joined where either or both have not reached the age determined by laws or canons, unless perhaps, with some most urgent necessity intervening, such as for the good of peace, such a union is tolerated.

Chapter III

Latin source headnote: With respect to marriage, those are pubescent who from the condition of the body can conceive and beget.

Isidore.

The pubescent are called from the pubes, that is, named from the modesty of the body, because these places *then* first put forth down. Certain persons, however, reckon puberty from years, that is, that he is pubescent who has completed fourteen years, although he matures most slowly. But it is certain that he is pubescent who *both* shows puberty from the condition of the body and can now beget. And child-bearing girls are those who give birth in childish years.

Chapter IV

Latin source headnote: From betrothals contracted with one younger than seven years, an impediment of public honesty does not arise; it is otherwise if they are contracted with one older, or with one younger who consents after seven years. And affinity following dissolves preceding betrothals for the future.

Alexander III, to the Bishop of Hereford.

We received the letters of your fraternity, from the tenor of which we perceived that, when a certain *parishioner of yours named A.* was of perfect age, he betrothed a certain girl in the cradle; but, as time proceeded, *the same A.* knew the girl's mother and received her as wife. *Whence, because you doubt*

whether a marriage of this kind ought to stand, you sought counsel from us concerning it. Concerning this we respond to your consultation in this manner: if the aforesaid man received the mother of the *aforesaid* girl as wife before *the girl herself* completed her seventh year, do not dissolve *the* marriage, *but permit the same man freely to keep the aforesaid woman as wife*, since betrothals of this kind which occur in the cradle are null. But if, after the *aforesaid* girl completed her seventh year, the aforesaid man received her mother *as* wife, since betrothals are from then accustomed to have force, do not defer pronouncing a sentence of separation between them, nor permit him to have either daughter or mother *as wife*.

Chapter V

Latin source headnote: Betrothals which are null from defect of consent do not create the justice of public honesty; but some betrothals do so, even though they have been dissolved in a lawful manner.

The same, to the Archbishop of York.

The *noble man W., son of G., approached our presence with your letters, from the tenor of which we perceived that, when he had betrothed the daughter of a certain noble man while she was of lesser age, and afterward, when she did not furnish assent in this matter, before she reached marriageable years a separation was celebrated between them. But as time proceeded, after the girl's father died,* [*the aforesaid*] *W. joined her mother to himself in marriage. Since you were unwilling to sustain this deed, you solicitously admonished him to dismiss her; and, because he was unwilling to acquiesce in your admonitions in this matter, you bound him with the bond of excommunication. At last, after receiving security from him that he would approach our presence and firmly observe our statute concerning this, you announced that the same man had been absolved at our command and sent him to our presence with your letters. But the aforesaid W., constituted in our presence, proposed to us by his assertion that he betrothed the girl herself while she was under her seventh year; afterward,* [*however*]*, before she reached marriageable years, she was unwilling in any way to consent to receive the aforesaid W. as husband, and thus she approached your presence with her father, in whose power she had remained, and with the aforesaid W. And when you heard from the girl's mouth, and knew through her and through her father, that she did not wish the aforesaid W. as husband, you immediately announced publicly in full synod that he was absolved from a betrothal of this kind. But after many years had elapsed and the girl's father also had died, our dearest son in Christ H., King of the English, delivered the mother of the aforesaid girl to the aforesaid W. as wife. The same W., so that discord arisen between his blood relatives and the woman's blood relatives might be quieted, received and solemnly betrothed her, took her without contradiction of the Church, and begot children from her; and the girl was joined to another man. But although it is contained in your letters that the girl herself was of lesser age when a betrothal of this kind was made, nevertheless it matters whether, when she was of lesser age,* [*she was*] *near an age fit for marriage or under seven years. And therefore* we command your fraternity *by apostolic writings, instructing* that, *after the truth of the matter has been diligently investigated and known*, if it is established to you that the *aforesaid* girl was not seven years old when she was betrothed to the *aforementioned* G., and that afterward she did not consent to him, and that the same G. was absolved by you from a betrothal of this kind, you command the marriage celebrated between the same G. and the girl's mother to be inviolably observed and announce their offspring to be legitimate; because, *as your discretion is not ignorant*, betrothals and marriages cannot occur before seven years, *especially* if consent does not afterward accede.

Indeed, if the aforesaid girl had completed her seventh year before [*a betrothal of this kind*], although the aforesaid man was absolved by law itself from betrothal to the girl because she was unwilling to

consent to him, nevertheless it appears dishonorable that he should have the mother of her whose daughter was betrothed to him. *But if it has appeared to you that he should remain with the girl's mother, lest discord formerly arisen between the blood relatives of each, but now quieted, be stirred anew, you will be able to dissemble this and tolerate it with equanimity. But the sons whom he received from her, if he took her as wife while the Church tolerated it, cannot be prohibited from succession to the paternal or maternal inheritance.*

Chapter VI

Latin source headnote: If an underage girl, betrothed and conducted home, seeks permission after becoming of age to marry another, she is not heard if the man swears that he knew her; nor is she heard if, not yet of age but near puberty, she is proved to have been known. And from betrothals contracted with a minor older than seven years, public honesty arises.

The same, to the Bishop of Norwich.

It was contained in your letters that, when a certain girl under marriageable years had been delivered to a certain man as wife and conducted home by him, *her parents asserting that she existed as of lawful age*, on reaching marriageable years she sought permission to marry another, asserting that she had by no means consented to the same man. *But the aforesaid man proposed to the contrary that, although the same girl perhaps had not yet reached her twelfth year when she was delivered to him as wife, nevertheless she was so close to the age that he knew her by carnal commingling. Hence it is that, since she says that she was not known by the same man, and you consulted us whether she can marry another*, we respond to your consultation in this manner: since it is expressly contained in the decrees that, if a man says that he knew his wife and the woman denies it, one must stand by the man's truth, faith is to be applied to the aforesaid man who says that he knew the woman herself, if he affirms it by oath.

But if she was near the age, as in the eleventh or about the twelfth year, and with her assent *and the will of her parents* was betrothed *and blessed*, and known by the same man, she ought not to be separated, especially since her parents confessed that she had been of lawful age. But if a girl under marriageable years *and near the age* was betrothed to someone, *blessed and conducted home*, it is not lawful for anyone of the blood relationship of the man to whom she was betrothed to take her as wife, nor is it permitted for the same betrothed man to join to himself anyone of the blood relationship of the betrothed woman [*in marriage*].

Chapter VII

Latin source headnote: If persons older than seven years contract betrothals, neither can withdraw before puberty. This first. And the one who first reaches puberty will wait for the other. This second. But if at the time of the contract one was of age and the other was not, not the former but the latter, upon becoming of age, can withdraw. This third.

The same, to the Bishop of Bath.

Concerning those who, [*existing*] under the years fit *for contracting* marriages, contract betrothals, whether both or one should protest before they reach years fit *for contracting* marriages and should petition to be separated, they are by no means to be heard. But if either of them reached the years of puberty while the other existed under the same years when those betrothals were contracted, if the one who is of lesser age protests when reaching those years and is unwilling to consent to the other, they can be separated from one another by judgment of the Church. But a woman who, after she

reaches marriageable years, married one who had not yet reached years fit *for contracting* marriages, since she once consented to him, will no longer be able *in any way* to dissent *or depart*, unless *perhaps* he whom she married, after he reaches lawful age, *altogether* refuses to furnish his consent to her.

Chapter VIII

Latin source headnote: Minors contracting betrothals ought not to be separated before puberty, but can be after puberty if they contradict the betrothals, unless carnal union intervened.

The same, to the same.

Your discretion asked us whether it is lawful for those who are joined in the name of marriage below marriageable years, or for one of them, to depart from such a marriage before they reach years fit for marriage. To this we respond *to your inquiry in this manner*: because before marriageable years they do not have conjugal consent *by authority of the holy Fathers*, they are held to wait until lawful age, and then either let the marriage be confirmed or, if they are unwilling to be together, let them be separated, unless *perhaps* carnal commingling intervened beforehand, since it is sometimes accustomed to anticipate the time of puberty. *But if one of them reaches the years, etc., as above in the preceding chapter.*

Chapter IX

Latin source headnote: Minors fit for marriage are bound by the contract of marriage unless violence intervenes.

The same, to the Archbishop of Genoa.

Concerning those, *however*, who are betrothed at a lesser age, *are delivered and joined, and in the course of time petition for judicial separation, alleging their lesser age or force done to them by their parents, by the present letters* we respond to your inquiry that, if they were so near the age that they could be joined by carnal union, they ought not to be separated *from one another* in view of their lesser age if one appears to have consented to the other, since malice appears to have supplied age in them. But of whatever age they may be, they can excuse themselves by violence inflicted unless consent accedes after the violence. [*That also, etc.* (*cf. c. On Presumptions II.* 23.)]

Chapter X

Latin source headnote: A contract before puberty, even with an attempt at carnal union, does not make a marriage.

Urban III, to the Bishop of Le Mans.

We received the attestations *transmitted to us by your fraternity* concerning the matrimonial cause which is debated between the young man H. and the woman G.; and, after they had been *diligently* inspected *and more fully understood, it manifestly* became known to us that the aforesaid young man had not yet reached his twelfth year when he received the aforesaid G. as wife. And although he had attempted, as each confessed, to deflower her, nevertheless the woman believes that she escaped as a virgin. But before he reached his fourteenth year, he departed from the aforesaid woman, who, since he is seventeen years old, contends to claim him for herself as husband. *But since the man is seventeen years old, he refuses to receive her. Whence, because, until you consulted us concerning the cause itself, you did not consider*

that you should proceed to pronouncement of sentence, we respond to your consultation in this manner: if the woman is unable to prove by suitable witnesses that after his fourteenth year or around the end of his fourteenth year the aforesaid young man consented to her, after receiving from him an oath that, after he reached lawful age, he did not consent to have her as wife, you can and ought to absolve him from the woman's claim and give permission to each to pass to other vows.

Chapter XI

Latin source headnote: If an older girl unwillingly contracted betrothals with a younger boy, she is not held to wait for him until he reaches adult age.

The same, to the Archbishop of Pisa.

We received from the letters of your fraternity that a certain girl in her twelfth year was sworn and betrothed to a certain boy of nine or ten years, and, as time proceeded, by the will of her parents rather than her own, as she asserts, was led to the house of the father of the *aforesaid* boy. There, unwilling and against her will, *as you propose that you heard from her own mouth, and driven both by the persuasions and* threats of her parents, she remained for a year and more; and at last, departing thence, she returned to her own house. *But when admonished by her mother, and afterward by you, as you assert, she wholly refuses to return to him, asserting that she never wished and does not wish to have him as husband, but petitions for the faculty of marrying another.*

But since the *aforementioned* boy, *as your letters contained*, has not yet reached his fourteenth year *of age*, nor *ever* had carnal access to the same *girl*, we respond to your discretion in this manner: if the *aforesaid* girl, *after being earnestly admonished by you for this purpose* that she wait until the same boy completes his fourteenth year *of age*, has not considered that she should wait *at your admonition*, according to those things which have been proposed, grant her the free faculty of receiving another man *as husband by our authority*. *Given at Verona.*

Chapter XII

Latin source headnote: Betrothals contracted with one younger than seven years acquire validity through mutual cohabitation after seven years and induce the justice of public honesty; nevertheless, they are dissolved by a marriage of the present.

Clement III.

Two children, William and Guilielma, *in your diocese, as we received*, were joined matrimonially, the boy being in his sixth year but the girl in her seventh; they remained together for three years. Then, *however*, the girl's father, withdrawing her from *her* betrothed, joined her to another named M., with whom she remained peacefully for seven years. But he then left her because he believed that she had another husband, namely him to whom she had first been betrothed. But the first betrothed man, reaching years of discretion, obtained from *P.*, your predecessor, permission to contract with another; he received as wife a certain woman named S., cousin of the first woman, and, remaining with her for some time, *nevertheless*, as he himself confesses, did not know her carnally, although she asserts that she was known by him.

But when the father of the aforesaid Guilielma saw her abandoned by the second man, he compelled by *force* the aforesaid William, to whom he had first betrothed her, altogether to dismiss his niece S.

and return to his betrothed Guilielma; afterward he cohabited with her for two years, *as it is reported*. Therefore, because you ask to be instructed what is to be done by you *in these things*, we respond briefly that, because childish age impeded it, there was no marriage between G. and G. And although the same man, after she married another, could have taken another as wife, nevertheless, because he took the said S., the cousin of the same woman, whether he knew her or not, he ought not to remain with the same S. on account of the justice of public honesty, nor to have recourse to the first woman, because she was lawfully joined to another.

(And below:) But since the man is the head of the woman, and William says that he did not know the aforesaid S. before, he will be able, if he wishes, to take another as wife, and S. to be joined to a lawful husband; but after separation, penance is to be enjoined upon each for a time to avoid scandal of the people. But if it were lawfully established that S. herself had been known by him either afterward or before, permission to contract will be given to neither while the other is living. Guilielma therefore will remain with M., *nevertheless* with suitable penance for a time imposed upon M. himself, who, on his opinion alone, without seeking the judgment of the Church, *perniciously* dismissed Guilielma.

Chapter XIII

Latin source headnote: A marriage which does not exist cannot be accused, as if it was contracted with one younger than seven years; nevertheless, an impediment can be denounced lest it be contracted in the future.

Innocent III, to C. and P., Former Sons of Malebranca.

In order to dissolve what had been done between I., *son of the noble man Leo* [*de Monumento*], and S., *daughter of the late Matthew* [*de Fortebrachio*], *concerning contracting marriage, it was proposed on your part in our presence and that of our brothers that, since the said girl had not yet reached seven years, neither marriage nor betrothals could be contracted with her. The assent of the blood relatives, who are principally to be required in such matters, was also lacking. Even if sufficient age had existed and the assent of the blood relatives had intervened, the persons nevertheless are not lawful for contracting marriage, because a line of consanguinity stands in the way.*

But after an accusation concerning consanguinity had been proposed *for the girl, and the degrees of consanguinity had been computed both on the part of the young man and on the part of the girl, when she wished to prove it by suitable witnesses*, the aforesaid I. proposed many exceptions through which he strove in many ways to remove you from the accusation. *And when disputation had continued for a long time on each side concerning his exceptions, after all things proposed on either side had been heard and understood, by the counsel of our brothers*, by interlocutory judgment we pronounce that neither marriage nor betrothals were contracted between the *said* young man and girl, since it is established that the girl had not yet reached seven years. Wherefore an accusation had no place, since there was nothing which could lawfully be accused; nevertheless, consanguinity could be denounced so that the marriage to be contracted would be prohibited.

Therefore, for the denunciation to be lawfully proved, we assign as the term *the feast of All Saints next to come*, saving not only the exceptions proposed but also those to be proposed. But lest anything meanwhile be attempted against the girl, by apostolic authority we *firmly* prohibit further new proceedings in the *same* business until either the denunciation is abandoned or, after it has been

proved, proceedings are conducted by judicial order. But if anything is attempted against our prohibition to her prejudice, we decree it to be void and altogether to lack force.

Chapter XIV

Latin source headnote: If someone contracts through words of the present with a minor in whom malice does not supply age, he is understood to have contracted not marriage but betrothals, even if earnest-money giving intervened.

The same, to the Bishop of Abbatis.

Your letters exhibited to us contained that a certain *noble man* betrothed his daughter, about twelve years old, to a certain noble *man*, who gave earnest money to her, with mutual consent acceding. *But after the nuptials had been deferred for a little while, the girl's father entered the way of all flesh. When he had been taken from human affairs, the maternal uncle of the aforesaid girl joined her in marriage to another, and the man who had first betrothed her contracted with her mother. But your predecessor, considering that he could not remain with her whose daughter he had lawfully betrothed, promulgated a sentence of separation between them. Afterward, when the second man, who had taken the aforesaid girl as wife, had died, she joined herself to a third while he who had first betrothed her was living. Moreover, both she and the same man considered that you should be humbly consulted as to whether they could lawfully* [*together*] *remain; but you, after deliberation had been had, responded that, while the first betrothed man was living, she could not lawfully be joined to another. But because your church petitioned that you consult the Apostolic See concerning this, you deferred proceeding further, humbly supplicating us that we deign to rescribe to you concerning this.*

But because, *through those things expressed above*, it could not *for certain* be established to us what age the girl was when she was betrothed to the same man, since it is said that she was about twelve years old, and whether prudence then supplied age in her, we respond *to your fraternity in this manner*: if the girl *was then of marriageable age, and lawful consent of the present intervened between her and the first man, without doubt a lawful marriage was contracted between them, even if carnal commingling did not follow. But if the girl* was not of marriageable age when the often-mentioned man betrothed her, and prudence did not supply age in her, beyond doubt not marriage but betrothals were contracted between them, although the same *girl* received earnest money from the man himself. *Wherefore, if according to the first manner she contracted marriage with him, while he lives she could not duly contract a conjugal covenant with another; but if according to the second manner betrothals alone were contracted, the marriage which was celebrated between her and the other ought to be reputed lawful, provided another canonical impediment does not stand in the way.* [*Given at Rome, at Saint Peter's, on the sixth day before the Ides of May, in the ninth year.* 1206.]

Title III: On Clandestine Betrothal

Chapter I

Latin source headnote: A clandestine marriage is not presumed; rather, the burden of proving it rests upon the one alleging it.

From the Council of Arles.

If anyone has secretly betrothed a woman and the woman or the man denies a betrothal of this kind, proof rests upon the man *alone*.

Chapter II

Latin source headnote: Those who contracted marriage clandestinely, if one or both deny it and lawful proof thereof does not appear, are not compelled by the Church to cohabit; and, if they make it public, it will be approved as though done in the sight of the Church, unless a reasonable cause exists which impedes it. This is what it says by adhering to the letter.

Alexander III, to the Bishop of Beauvais.

As to what *was signified to us on your part, that we ought to dispense concerning clandestine marriages, we do not see what dispensation is to be applied concerning them*. *For* if marriages are contracted so secretly that lawful proof thereof does not appear, those who contract them are not in any way to be compelled by the Church. But if the persons contracting wish to make this public, unless a reasonable *and lawful* cause hinders it, they are to be received and approved by the Church as though contracted from the beginning in the sight of the Church. *But if any, etc.* (*cf. c.* 9, *Which Sons IV.* 17.)

Chapter III

Latin source headnote: When marriages are to be contracted, edicts ought to be proposed publicly in the church by priests, with a term assigned within which anyone who wishes to impede may oppose an impediment; and, if there is a probable conjecture of an impediment, the marriage is to be prohibited until cognizance is taken concerning this. This first, as far as § "But if anyone." — (But if anyone, etc.:) If a marriage has been contracted in a prohibited degree clandestinely or contrary to the prohibition mentioned above, even by those ignorant of the impediment, those born of that marriage are illegitimate. The same applies if both parents know the impediment to the marriage, although they contract in the sight of the Church. This is what it says as far as § "Indeed." Abbas. — (Indeed, etc.:) A priest who contemns prohibiting forbidden marriages, and any cleric, even a regular, who was present, are suspended from benefice for three years and, if the fault demands, are punished even more gravely; the contracting persons themselves acting contrary to this chapter are also otherwise lawfully to be punished, and the same applies to those denouncing calumniously. This is what it says as far as the end. Abbas.

Innocent III, in the General Council.

Since the prohibition of conjugal union has been revoked in the last three degrees, we wish it to be strictly observed in the others. Whence, adhering to the footsteps of our predecessors, we prohibit clandestine marriages altogether, prohibiting also that any priest presume to be present at such marriages. Therefore, extending generally to other places a special custom of certain places, we establish that, when marriages are to be contracted, they are to be publicly announced in the churches by priests, with a suitable term fixed in advance, so that within it whoever wishes and is able may oppose a lawful impediment; and the priests themselves are nonetheless to investigate whether any impediment stands in the way. But when a probable conjecture against the union to be contracted appears, the contract is to be expressly prohibited until it is established by manifest proofs what ought to be done concerning it.

§ 1. But if anyone presumes to enter clandestine or prohibited marriages of this kind in a prohibited degree, even ignorantly, let the offspring received from such a union be considered altogether illegitimate, to have no assistance from the ignorance of the parents, since by contracting thus they

appear not to be devoid of knowledge, or at least to be affecters of ignorance. In like manner let the offspring be considered illegitimate if both parents, knowing a lawful impediment, presume to contract despite every prohibition, even in the sight of the Church.

§ 2. Indeed, if a parochial priest contemns prohibiting such unions, or any person, even a regular, presumes to be present at them, let him be suspended from office for three years, to be punished more gravely if the quality of the fault demands it. But suitable penance is *also* to be enjoined upon those who have presumed to be joined in such manner even in a permitted degree. But if anyone maliciously objects an impediment in order to impede a lawful union, he will not escape canonical punishment.

Title IV: On the Betrothed Woman of Two Men

Chapter I

Latin source headnote: One who contracts successively through words of the present with two women is held to adhere to the first. But if he first contracted through words of the future and second through words of the present, he will adhere to the second.

Augustine, On the Pledge of Pact and Consent.

The pledge of pact and of consent is spoken of in two ways. If someone has given a certain woman a pledge of pact, he ought not to take another. If he has taken another, he ought to do penance for the pledge falsified; nevertheless, let him remain with her whom he took. For so great a sacrament ought not to be broken. But if he has given a pledge of consent, it is not lawful for him to take another. But if he has taken another, he will dismiss her and adhere to the prior *wife*. Now there is a pledge of pact when someone promises a certain woman his pledge that he will take her if she permits him to have intercourse with her, or even in place of consent. But a pledge of consent exists when, even if he does not clasp her hand, he nevertheless consents in heart and mouth to take her, and they mutually grant themselves, one to the other, and mutually receive one another.

Chapter II

Latin source headnote: It sets forth the penance of him who received as wife for himself the betrothed woman of another by words of the present; nor can he ever have her as wife. This is what it says according to the letter.

From Burchard, Book XXX.

You received as wife for yourself her whom another had held as betrothed to him. Dismiss her, because she can never become lawful for you, and do penance for forty days on bread and water, which they call a carina, with the seven following years.

Chapter III

Latin source headnote: Betrothals of the present are not dissolved by a following marriage, even one consummated by carnal union.

Alexander III, to the Archbishop of Salerno.

Although beyond the customary *and more than customarily we are impeded by many and various businesses in such a way that it is not easy for us to respond to the consultations of some, nevertheless by that special favor which we have toward your person and by fraternal charity we are compelled to disclose to you by the present letters, however much we are intent upon other things, what we think concerning those things about which your prudence consulted us. You indeed consulted us whether, if lawful consent of the present intervened between a man and a woman, with an oath furnished or not furnished, but carnal union did not follow, it is lawful for the woman to marry another; or, if she married another and carnal union followed, whether she ought to be separated from him. But concerning this* we respond to your consultation in this manner: if lawful consent of the present intervenes between a man and a woman *under that solemnity which is accustomed to occur, namely, with a priest or even a notary present, as is also still observed in certain places, before suitable witnesses*, in such a way indeed that one expressly receives the other by customary words in their mutual consent, each saying, "I receive you as mine," and, "I receive you as mine," whether an oath has been interposed or not, it is not lawful for the woman to marry another. And if she has married, even if carnal union followed, she ought to be separated from him and compelled by ecclesiastical rigor to return to the first, although *others* think otherwise, and *otherwise also* it has at times been judged by certain of our predecessors. *But, etc.* (*cf. c.* 2, *On the Conversion of a Spouse III.* 32.)

Chapter IV

Latin source headnote: He who appeals in a matrimonial cause ought to be prohibited from contracting another marriage while the litigation is pending; and if he contracts, he ought to be separated.

The same, to the Archbishop of Genoa.

Your fraternity consulted us *as to what you ought to do concerning those who betroth certain women and, in the course of time, before they take or know them, receive others as wives. Concerning this, indeed, we respond to your consultation in this manner: if a man and a woman receive one another by express mutual consent of the present, neither of them, while the other survives, will be able to pass to other vows, although either can migrate to a monastery. But if mutual consent of the present did not occur between them, but a promise of the future—namely, that each said to the other, "I will receive you as mine," and, "I will receive you as mine"—if another has betrothed and conducted home that woman, even if between the first persons there was an oath, as we have said, of the future, the second marriage cannot be separated in view of this betrothal, but penance is to be enjoined upon them for violation of the pledge.*

But concerning those who before you raise a controversy over a betrothal made by mutual consent of the present and, while an appeal is pending which they interpose to the Apostolic See before sentence or cognizance of the cause, receive others as wives, we judge that this is to be done: if henceforth they consider that they should appeal in such a case, you are publicly to prohibit them *more strictly* in church from contracting another marriage before decision of the cause. And if they presume to act contrary to the prohibition of the Church *thus* publicly made, you will be able to annul the marriage so presumptuously contracted. [*But concerning those, etc.; cf. c.* 9, *On the Betrothal of Minors IV.* 2.]

Chapter V

Latin source headnote: He who betroths two women through words of the present will have the first betrothed as wife, even if he knew the second first; nor does a contrary custom have force. And this last point is added to the chapter "Although" above under the same title.

Innocent III, to the Bishop of Modena.

Your letters some time ago—(And below:) Concerning the custom which long obtained in the city of Modena, that, if someone swore he would take a certain woman and betrothed her short of carnal union, and if afterward he betrothed another and knew the other, the one first known, not the one first betrothed, would be adjudged to the man. (And below:) But lest a part be base which does not agree with its whole, and because the Church of Modena ought humbly to hold and observe what it sees the See of Blessed Peter and its metropolis follow and teach, in marriages to be contracted henceforth we wish you to observe this: after lawful consent of the present, which suffices in such matters according to the canonical sanctions, has intervened between lawful persons—and, if it alone is lacking, the other things, even when celebrated with intercourse itself, are frustrated—if persons lawfully joined afterward contract in fact with others, what was done first by law cannot be annulled.

Title V: On Conditions Appended in Betrothal or in Other Contracts

Chapter I

Latin source headnote: The failure of a shameful condition appended in the contract of marriage does not vitiate the marriage, but the condition is vitiated.

From the African Council.

Whoever shall have betrothed a woman under the name of a condition, and shall *afterward* have wished to leave her, we say that the condition is to be broken and the betrothal is to be held irrefragably.

Chapter II

Latin source headnote: A slave manumitted upon this condition, that he become a monk and serve a monastery, otherwise returning into servitude, is compelled, if, having accepted this, he became a monk, to observe the will of the manumitter.

Gregory, to the Bishop of Spoleto.

Since it is proper—(And below:) [*But*] *if perchance someone complains that he was unjustly excommunicated*, [*let your fraternity*] *ascertain it by subtle investigation; and, once the truth is known, so dispose the case that* [*neither may injustice long prevail unto the affliction of an innocent person,*] *nor may the vigor of discipline* [*either*] *be broken, or* [*by an indiscreet presumption be able to be*] *dissolved*. (And below:) The priest H. complained [*to us*] that a certain deacon had manumitted two bondservants [*of his right*] upon this condition, that they become monks and remain in the monastery in which he himself had been, adding that, if either acted contrary to it, he should again [*in every respect*] be subjected to servitude; and that one of them, having despised this condition, had deserted the monastery [*with rash audacity*] and joined himself among the clerics. You, therefore, if you find it to be so, conduct yourself in such a way that neither

may he have the faculty of deserting the monastery, nor may the will of the manumitter, *being nevertheless preserved*, be able to be passed over.

Chapter III

Latin source headnote: He who swore to take a woman as wife if she gave him one hundred is not bound, if the one hundred are not given, to take her, unless afterward he consented purely or knew her.

Alexander III, to the Archbishop of Palermo.

Concerning those—(And below:) [*Compare chapter* 5, *On Betrothals, IV.* 1.] But if someone shall have furnished an oath to a woman under words of this kind: "I shall take you as wife if you give me so much," he will not be held guilty of perjury if he does not take as wife the woman who is unwilling to pay him what he asked to be given to him *under oath*, unless consent of the present or carnal commingling has afterward intervened between them.

Chapter IV

Latin source headnote: A thing donated to a church under a mode immediately belongs to the church, nor is it revoked when the mode is not observed, unless this is expressed in the contract. This the chapter says according to the truer understanding, and it is a very notable and highly citable text. Abbas.

The same.

But when any possession is donated to a church with a condition interposed, the gift cannot afterward be revoked by the donor, unless perhaps it was conferred upon such a condition that, when it ceases, the *possession* ought to be revoked.

Chapter V

Latin source headnote: One contracting marriage under a condition that is not disapproved is not compelled to consummate the marriage before the condition occurs.

Urban III.

But concerning that which *you similarly asked of us*, whether he who consented to a certain woman if her father *namely* furnished his assent is to be compelled to consummate the marriage, we *nevertheless* respond that, since consent which is reserved in another's judgment cannot be said to be free, and canonical institutions do not disapprove the condition itself, *which is consonant with honorable conduct*, unless the will of the father afterward intervenes, he is by no means to be compelled to contract the marriage. For although *of happy memory* Pope Alexander, *our predecessor, in his consultations,* responded that betrothals contracted with a condition interposed, if consent of the present intervenes or carnal union follows, ought not to be dissolved, even though *the condition* itself was not fulfilled, but ought firmly to be observed, this is by no means adverse to our determination, since consent of this kind is not to be held as consent of the present, although it is expressed more evidently through words of the present, because it consists in another's judgment, not already had but to be had.

Chapter VI

Latin source headnote: He who contracts betrothals under an honorable condition and knows the betrothed woman before the condition occurs withdraws from the condition.

Innocent III, to the Bishop of Masicano.

Through your letters you intimated to us that, when *in your presence* a certain woman named P. claimed as husband *a certain man named* N., asserting that mutual consent of the present had intervened between them and that carnal union had followed, the man himself, although he did not deny the contracted betrothals and the carnal union, nevertheless asserted that he was not bound to take her as wife, because the betrothals between them had been contracted under this condition, if *namely* his father and paternal uncle consented to the betrothals, but, as soon as they learned of them, they contradicted both the bridegroom and the bride, *which the same man endeavored to prove by suitable witnesses*. But the woman replied that, although faith had been pledged by each under the aforesaid condition, nevertheless no contradiction had ever been made to her by the man's father or paternal uncle, and she said that both before the time of the contradiction expressed by the witnesses and after *it*, carnal union had intervened between them. *She added, moreover, that, although in the beginning they had contracted conditionally, nevertheless in the course of time they consented purely to marriage without the addition of a condition, and she asserted that she would prove this by witnesses. Therefore, after the witnesses of each party had been received, when you caused the attestations of the woman to be published before you in the presence of two examiners, the witnesses whose statements were being read immediately cried out that they had not said the things that were being read and that the things they had deposed were not written. But one of the examiners then strongly opposed them. And because of this the woman petitioned that the same witnesses or others be heard again upon the same articles. But you, moved by this novelty, fixed the following day for the parties; when they had been constituted in your presence, you ordered all the examiners to be summoned, adjuring them under threat of anathema to say whether those were the true attestations which the witnesses had opposed; and they immediately produced other attestations in their midst. When these had been objected to through the man's advocate, just as the former ones had been opposed by the witnesses, after manifold allegations the second attestations were admitted by the parties, and the attestations of the man were afterward published. Moreover, the woman insisted chiefly upon this article, that both before and after the renunciation of the betrothals the same man had known her carnally and had begotten a daughter from her; this she endeavored to demonstrate by her own oath. But because upon these matters you received not only various but contrary opinions, recurring to the teaching authority of the Apostolic See, you humbly asked to be instructed as to what is to be thought in such matters. But we, having inspected the attestations admitted by the parties, which you sent to us enclosed in your letters,* respond to your consultation in this manner: since it is manifestly established *through the confession of both the man and the woman* that, after the betrothals were contracted, carnal union followed between them, there is *indeed a strong* presumption in favor of marriage, because he appears to have withdrawn from the appended condition. For even if *each point is* proved by witnesses, that, after the father and paternal uncle of the man contradicted the betrothals, the same man knew that woman by carnal union, nevertheless it is in no way proved that, before he himself knew her, his father and paternal uncle had taken care to contradict. [*Given at Ferentino, on the second day before the Ides of July.* 1203.]

Chapter VII

Latin source headnote: If a shameful or impossible condition is appended in a contract of marriage, it is held as not added, unless it is contrary to the substance of marriage, because then it vitiates the

contract. This the chapter says; it is notable and highly citable.

Gregory IX. If conditions contrary to the substance of marriage are inserted, as, for example, if one says to the other, "I contract with you if you avoid the generation of offspring," or, "until I find another more worthy in honor or resources," or, "if for gain you hand yourself over to be adulterously used," the matrimonial contract, however favorable it may be, lacks effect; although other conditions appended in marriage, if they are shameful or impossible, ought, because of the favor shown to it, to be held as not added.

Title VI: Which Clerics or Persons under Vows Can Contract Marriage

Chapter I

Latin source headnote: A deacon or subdeacon cannot contract marriage and, if they have contracted, even if they have become irregular, they ought to be separated.

Alexander III, to the Archbishop of Reims.

Concerning the deacon *indeed* who on Holy Saturday wounded *a certain* other deacon and took a wife, we respond this to your prudence: if, with contrite and humbled heart, he wishes to return to the Church, after dismissing her whom he took as wife and obtaining absolution, and after penance has been enjoined upon him for each transgression, once he has performed it you will be able by dispensation to restore to him the office of the diaconate and, if he has been of perfect life and conduct, to ordain him as priest. But that a subdeacon, whether he has killed a man or not, cannot contract marriage, the censure of the sacred canons demonstrates. [*The parishioners, etc.* (*Compare chapter* 26, *On Tithes, III.* 30.)]

Chapter II

Latin source headnote: A subdeacon cannot contract marriage.

The same, to the Bishop of Le Mans.

From the tenor of your letters we received that *F.*, bearer of the present letters, while constituted in the office of the subdiaconate, joined a certain woman to himself as spouse. *Whence you, as a provident and discreet man,* caused him to abjure the woman whom *he had taken as wife*. Concerning this *deed* we commend your prudence in the Lord, *commanding you through the present writing* that, if he wishes to pass to a *canonical or* monastic order, and if after his praiseworthy conduct it seems good to you, you permit him to be promoted to the higher orders. But if he is unwilling to transfer himself to religion, permit him neither to minister in the subdiaconate nor to be promoted to higher orders; nevertheless, he will be able to minister in the minor orders.

Chapter III

Latin source headnote: A solemn vow impedes and dissolves marriage after it has been contracted; a simple vow only impedes a marriage to be contracted but does not dissolve it after it has been contracted.

The same, to the Bishop of Worcester.

We remember *that on your part we heard a question of this kind, namely whether those who before a bishop devoted themselves to passing to religion and receive the habit of religion, if afterward they take wives, are to be compelled to dismiss them and to return to the church to which they had conveyed themselves. Concerning this, therefore,* We respond that, if anyone who devoted himself to religion and, having received the habit, made profession, afterward joined a woman to himself, he is to be compelled to withdraw from her, and *ought* to pass without contradiction to the church to which he conveyed himself. But if he neither received the habit nor made profession, but made only a vow and promised that he would pass to religion, although he afterward contracted marriage, he is not to be compelled to pass to religion and to break the matrimonial vow.

Chapter IV

Latin source headnote: The reception outside a religious house of the habit of professed persons from one who does not have the power of incorporating into religion impedes, in a doubtful case, a marriage to be contracted, but does not dissolve one already contracted. This the chapter says according to the understanding which Panormitanus holds.

The same, to the Bishop of Lucca.

Your fraternity consulted us as to what is to be done concerning a noble woman who, *after the death of her husband,* having cast aside precious garments, changed her habit and received a veil from the hand of a priest, but did not renounce her own property, enter a cloister, make profession into the hand of any bishop, abbot, or abbess, or upon an altar, or promise obedience; but afterward, when a year had elapsed, *because she could not bear the disturbances of many persons and feared a lapse of incontinence,* having cast aside the religious habit, she married a certain nobleman *solemnly by license of the Church. Concerning this, therefore,* We respond to your consultation in this manner: just as a simple vow impedes a marriage to be contracted and does not dissolve one already contracted, so the habit, received without profession, impedes one from being contracted, but by no means dissolves one contracted. [*Concerning the rest, etc.* (*Compare chapter* 11, *On Homicide, V.* 12.)]

Chapter V

Latin source headnote: A vow of chastity made in the present impedes a marriage to be contracted; nevertheless, for cause the Church sometimes permits marriage to be contracted. This the chapter says by adhering to the letter.

The same.

Coming to our presence, M. the hermit proposed *by his assertion to us* that the woman I., with faith pledged to a certain absent man, promised that she would marry him, but afterward, hearing many things about the severity *and inhumanity* of the *man* himself, she was unwilling to be joined to him. Therefore, since she feared that she might be compelled to marry him, in his hands she *simply* promised a vow of continence, but did not change her place or garment. Upon hearing this, the *aforesaid* man joined another woman to himself, *and received offspring from her*. We, therefore, considering that it is safer that the aforesaid woman, after the pledge of faith and the vow simply offered, contract marriage than incur the guilt of fornication, *by commanding through apostolic writings* order your fraternity that, if she proceeded no further, *and neither changed her garment or place nor made*

profession, you enjoin upon her fitting satisfaction for the faith falsified and the vow violated, and do not postpone granting her license in the Lord to marry whom she wishes.

Chapter VI

Latin source headnote: A simple vow impedes betrothals of the future but does not dissolve the marriage that follows; it is otherwise in a solemn vow.

Celestine III.

Again, a certain man, *as you say*, having emitted a vow of chastity, swore that he would afterward take a certain woman as wife. Whence, having been asked by your fraternity, *after consulting prudent men*, we judge that, since a simple vow binds no less before God than a solemn one, he should do penance for the fact that he swore rashly, and should endeavor to observe the vow that he made to God. But if, after he furnished an oath of this kind, he had hastened to nuptials *already* by his own motion, since a simple vow [*although*] it impedes a marriage to be contracted, nevertheless does not dissolve one already contracted, your question appears to contain no ambiguity. [*Moreover, as to that which, etc. Compare chapter* 1, *On the Conversion of Infidels, III.* 33.]

Chapter VII

Latin source headnote: A solemn vow impedes and dissolves marriage after it has been contracted.

Innocent III, to the Bishops of Lisbon and Coimbra.

It was represented to our apostolate by the intimation of the noble woman I. that, *long ago, when she was a girl and constituted in tender years, she took M. Sancii as husband, who a short time afterward was killed by the enemies of the cross of Christ. After his death,* supplication was made by certain courtiers to the King of León for union with her. When this came to the knowledge of her blood relatives, they urged her, under a royal adjuration, to take a husband. But she, protesting that she was then unwilling to marry, received counsel from them that she emit a vow of chastity, which she made into the hands of a certain one of the brothers of Saint Augustine, with this tenor added: that she would remain in her own house with all her substance. Indeed, she afterward remained for two years in the habit of the same order, although she asserts that she did this unwillingly and under compulsion, not so much from fear of the king as of her parents. *After these things she indicated to the same king what she had done; approving it, he forbade anyone, against her will, to enter her house or to carry anything away from it. But meanwhile, after a little time had elapsed, the courtier P., carrying royal letters with him, and F. Ferdinandi entered the house of the said woman in order that the same P. might take her as wife at least by force, and they received from her the answer that, if the same P. took her, he would perish by her hands. But after these things, having abandoned her house and all the things that she had, she lay hidden for three weeks in the house of a certain Jew, and for six weeks in the church of Saint Mary of Veiga, in such a way that she did not dare even to go out from there on account of human necessities.* At last, *seeing herself compelled and destitute of all things, and* considering *nevertheless* that she had emitted the vow unwillingly, having laid it aside, by the counsel of her parents she was publicly joined matrimonially to P. Michael, from whom in the course of time she bore four sons. *But because she desires to prefer the salvation of her soul to all things, and fears that a union of this kind is not lawful, she humbly petitioned to be instructed by our response as to what she ought to hold concerning these things.* We, therefore, considering that in the emission of the vow which preceded, no compulsion, or only slight compulsion, had been present, which the patience and perseverance of the time that followed entirely

put to flight, and that the subsequent union was rather wrongful and violently extorted, *through apostolic writings* order your fraternity that, *after the truth has been investigated more diligently*, if the truth supports the foregoing, you take care to admonish and induce the aforesaid woman to resume the religious habit wrongfully cast aside and to observe what she vowed, and, if there is need, to coerce her through ecclesiastical censure. [*But if not both, etc. Given at the Lateran, on the Kalends of December.* 1199.]

Title VII: On One Who Took as Wife Her Whom He Polluted by Adultery

Chapter I

Latin source headnote: If someone, while his wife is living, contracts with a second woman who is ignorant of this, after the first wife has died he will not, at his own petition, be separated from the second.

Alexander III, to the Abbot of Saint Albans.

It was proposed to us that a certain man *O.*, while having a wife, joined to himself another woman who was ignorant of a matter of this kind, *from whom he had several sons*; but after the first wife died, he endeavors to withdraw from the second, *asserting that while his wife was living it was not lawful for him to join her to himself*. Although it is held in the canons that no one is to join *in* marriage her whom he had first polluted by adultery, and especially her to whom he had pledged faith while his wife was living, or who had plotted the death of the wife, nevertheless, because the aforesaid woman was ignorant that he had another wife living, and it is not worthy that the aforesaid man, who knowingly acted contrary to the canons, should carry away profit from his own fraud, we respond to your consultation in this manner: unless the *aforesaid* woman seeks judicial separation, they are not in any way to be separated at the petition of the man, *since he would appear to carry away advantage from his own offense*.

Chapter II

Latin source headnote: If, while the first wife is living and has not been known carnally, someone knowingly contracts with a second and knows her, even after the first has died he cannot have the second; it is otherwise if the first was not a lawful wife.

The same, to the Abbot of Fountains.

O. of Anjou signified to us, *through his brother W., that he, a parishioner of the church of York, was seized by W. de Romar., who has been taken from this light, and was held by him so long in iron chains and prison that he compelled him to swear that he would take the woman H. as wife. But when he had escaped the chains and prison, he took another as wife, from whom he begot sons. Afterward, the same O., having been drawn into a suit by the aforesaid H. before our venerable brother the Archbishop of York, legate of the Apostolic See, was compelled by him to affirm by oath that he would not approach her whom he had voluntarily taken as wife until the suit was terminated by ecclesiastical judgment. But because, before the case was lawfully heard, the aforementioned H. closed her last day, the aforesaid O. does not dare to return to her from whom he had sons. It is for this reason that, by commanding through apostolic writings,* We order your discretion that, *after the truth of the matter has been diligently investigated and ascertained*, if it is established *to you* that so great a force was brought to bear upon the same O. *that he swore to take the aforesaid H. as wife, and* that he did not consent voluntarily to the first woman, nor after furnishing the oath did he know her carnally, on account of this you do not

fail to grant him the free faculty, *with appeal removed*, of returning to the other whom he afterward took as wife. Otherwise, forbidding him under threat of anathema to return to the second, give him license to take another, *if he wishes*, as wife.

Chapter III

Latin source headnote: A man cannot contract with her whom he knew while his wife was living if she plotted the death of the wife.

The same, to the Bishop of Baranum.

Concerning this *indeed*, which *through your letters you asked concerning the bearer of the present letters*, whether it is lawful for someone to contract marriage with her whom, while his *other* wife was living, he joined to himself in a de facto marriage, we respond *to your solicitude* in this manner: if the adulteress plotted anything toward the death of the wife, whether *that man* pledged faith or not that, after the latter had died, he would take the former as wife, according to the canons he is *perpetually* prohibited from her consortium, and this prohibition is to be perpetually observed.

Chapter IV

Latin source headnote: He who, while his wife was living, even though separated from him as to the marriage bed, took a second wife who was aware of the matter will, after the first has died, be separated from the second; but he will be able to contract with another.

Clement III.

From the intimation of your letters we received that T., *bearer of the present letters, your parishioner, formerly* cast off his wife, who had been caught in adultery, with the assent of your predecessor, and that she afterward received the monastic habit; but the said T., before she died, brought in another woman, *and lived with her for twelve years*, and received several sons from her. *But because the above-mentioned woman died and you considered that the Apostolic See should be consulted as to what ought to be done concerning the second union,* we therefore respond to your fraternity, *by the counsel of our brothers*, that you ought *without delay* to separate them from one another; but the same man, after penance for the adultery has been enjoined upon him, will be able to take another as wife.

Chapter V

Latin source headnote: He who, while his lawful wife is living, contracts adulterously with a second woman will, even after the first has died, be separated from the second, even if he cohabited with her for a long time and received sons from her.

The same.

While I., bearer of the present letters, had a lawful wife named A., he committed adultery with M., *which he disclosed to you in public confession, as your letters demonstrated to us*. And when he had been called into court concerning this, he abjured *the adulteress M. herself in court*, and afterward, *putting aside and* contemning the oath, while the lawful wife was living, he presumed to contract *a marriage of whatever kind* with her and to cohabit for a long time with the *adulteress*. At last, after the aforesaid A. was taken from the present light, the aforementioned I. *nevertheless* remained for a decade with the *aforesaid* adulteress, from whom he *also* begot ten sons. *Therefore, because you consult whether the aforesaid*

John and that woman can remain together or, if they ought to be separated, whether it is lawful for them to hasten to other nuptials, we consequently give this response to your consultation: let them be separated altogether, and, after *fitting* penance has been enjoined upon them, let perpetual continence be prescribed, especially since they have both advanced in their days and, having so long persisted publicly in adultery and perjury with certain knowledge, have disturbed the Church with grave scandal. For you know that Pope Leo established that no one is to take in marriage her whom he polluted by adultery, and that in this case matters proceeded further than if faith alone had been furnished to the adulteress that, when the lawful wife had died, he would take her as wife, since, even while that first wife was living, as if matrimonially, the adulterer presumed to adhere to the adulteress and rashly to violate his oath. Both Pope Gregory and the Synod of Tribur detest such a marriage, in which even no sacred bond of an oath intervened, and commanded each person joined in this manner to be subjected to public penance and to remain perpetually without any hope of marriage. Nor *certainly* does the fact that they cohabited with one another for a decade and received ten sons furnish any support to the same I. and M. so that they might remain together, since the multiplicity of offspring thus received aggravates their crime the more, and length of time does not diminish sin but increases it. It will nevertheless belong to your solicitude that each provide for his or her sons *who have been begotten and*, according to the resources that are available to them, supply the things necessary *for their sustenance*.

Chapter VI

Latin source headnote: If someone, after his wife has died, contracts with her whom he knew while his wife was living without a pledge of faith, the marriage holds, provided neither plotted the death of the deceased wife.

Innocent III, to the Bishop of Spoleto.

You signified to us that, when P., a citizen of Spoleto, had lawfully taken a certain woman as wife, having abandoned her he adhered to a certain prostitute, *and, when he could not be recalled from her cohabitation to his lawful marriage bed, you promulgated a sentence of excommunication against him*. But when *in the meantime* his wife had entered the way of all flesh, he betrothed the prostitute to whom he had adhered. We, therefore, respond to your inquiry *according to canonical form* in this manner: unless either of them plotted the death of the deceased wife, or while she was living pledged faith to the other concerning contracting marriage, you are to adjudge the above-mentioned marriage lawful, being about to impart to the excommunicated man the gift of absolution, if he seeks it, according to the form of the Church. [*Given at Rome, at Saint Peter's, on the eighth day before the Kalends of May.* 1198.]

Chapter VII

Latin source headnote: If someone, while the first wife is living, takes a second wife who is ignorant of this matter, after the first has died he lawfully remains with the second when new consent intervenes.

The same, to the Chapter of Messina.

Coming to our presence, the layman G., *bearer of the present letters*, showed *to us* by humble intimation that, when *formerly* in the city of Limoges he had joined a certain woman matrimonially to himself, *and had cohabited with her for two years*, afterward withdrawing from her *through levity of mind*, he came to

Messina, where he solemnly joined to himself the woman M., who was *entirely* ignorant that the *same G.* had another wife, *from whom he is known to have received two sons*. But when penance had been enjoined upon him that he return to his lawful wife, and on account of this he had returned to his homeland, finding that his wife had paid the debt of the flesh, he returned to the city of Messina and cohabited with the above-mentioned M. as with a lawful wife. *But now, humbly and devoutly doing the penance imposed upon him for the former transgression, he petitioned from us license to cohabit with the same M.* Although the *aforesaid G.*, while his lawful wife was living, could not join the aforesaid M. to himself as wife, nevertheless, because, after his wife died, as one released from her law, he could anew consent matrimonially to the same M., provided he had not pledged faith to the adulteress or [*had not*] plotted the death of his wife, we [*through apostolic writings*] order your discretion that, if it is so, you grant the same G. license to adhere to the above-mentioned M. with conjugal affection, *with the obstacle of any contradiction and appeal removed, not permitting him to be unduly troubled concerning this by anyone*.

Chapter VIII

Latin source headnote: One contracting with a second woman while the first is living, whom, however, he knew neither before nor after the contract, can, after the first has died, contract with the second.

Gregory IX, to Brother R.

If someone, while his wife was living, with faith pledged promised that he would take another woman, or contracted in fact with her, if neither before nor afterward, while his lawful wife survived, he knew that woman, although penance is to be enjoined upon each of them for the fact that they gravely transgressed in this, nevertheless the marriage which he contracted with her is not to be dissolved after the death of the wife. But it ought not to be tolerated if, either before or afterward, while his wife lived, he had polluted the other woman by adultery.

Title VIII: On the Marriage of Lepers

Chapter I

Latin source headnote: Leprosy supervening does not dissolve marriage or the effect of marriage; therefore, those joined to one another by marital affection ought to care for one another, or to be induced to vow perpetual continence.

Alexander III, to the Archbishop of Canterbury.

It has come to us that, although those who incur the disease of leprosy are by general custom separated from the communion of men *and transferred outside cities and villages to solitary places*, neither wives follow husbands nor husbands their *own* wives when they are thus ill, *but presume to remain without them*. Therefore, since husband and wife are one flesh, one ought not to be without the other any longer; *by commanding through apostolic writings* we order your fraternity not to postpone inducing, by solicitous exhortations, wives to follow husbands and husbands their wives who incur the disease of leprosy, and to minister to them with conjugal affection. But if they cannot be induced to this, more strictly enjoin upon them that each observe continence while the other is living. But if they contemn observing your mandate, bind them with the bond of excommunication.

Chapter II

Latin source headnote: Spouses are not to be separated from marriage because of leprosy, and lepers can contract marriage, and spouses are bound to render the debt to each other.

The same, to the Bishop of Bayonne.

Since *from many authorities, and especially from evangelical truth*, it is lawful for no one, except for the cause of fornication, to dismiss his *own* wife, it is established that, whether a woman has been struck by leprosy or detained by another grave infirmity, she is not for that reason to be separated from [*her*] husband or even dismissed. *But concerning this,* [*which concerning the bearer, etc.*] (And below: [*Compare chapter* 3, *On One Who Took as Wife, IV.* 7.]) But if lepers are unwilling to be continent and find someone willing to marry them, they are free to hasten to marriage. But if by *divine judgment* it happens that the husband or wife becomes leprous, and the infirm spouse demands the carnal debt from the healthy one, by the general precept of the Apostle that which is demanded is to be paid, and no exception to that precept is found in this case.

Chapter III

Latin source headnote: Betrothals of the future do not absolutely compel one to contract marriage with a leper when leprosy supervenes after the betrothals.

Urban III, to the Bishop of Florence.

We received the letters *of your fraternity with due kindness; through them, having been made more certain of the sincerity of your faith and devotion, we are more abundantly moved toward your honor and advantage. But* because you asked [*us*] whether, if, after betrothals of the future were contracted between *certain* lawful persons, before the woman is conducted home by the man, one of them incurs the disease of leprosy, the other ought to be compelled to consummate the marital union, *or can transfer himself or herself to second vows, we respond to your solicitude* that he ought not to be compelled to receive her, since marriage has not yet been consummated between them. [*But concerning her, etc.* (*Compare chapter* 6, *On the Separation of Spouses, IV.* 19.)]

Title IX: On the Marriage of Slaves

Chapter I

Latin source headnote: A slave can contract marriage when his lord contradicts it; but on account of this he is not freed from the services owed to his lord.

Adrian, to the Archbishop of Sancteburg.

It is worthy *and does not disagree with the path of reason that those matters which appear to contain within themselves a scruple of doubt be referred to the judgment of the Apostolic See, so that from that source the faithful of Christ may rejoice that they find certainty in doubtful matters from which they are known to have received the teaching authority of the faith. But your fraternity, if we remember well, asked our apostolate what ought to be done concerning marriages of slaves which are contracted when their lords are unwilling and contradict them; concerning this we considered that this response should be made to you*. Indeed, according to the word of the Apostle, *as your discretion recognizes*, just as in Christ Jesus there is neither free person nor slave *who* is *to be* removed from the sacraments of the Church, so *also* marriages among slaves ought not in any way to

be prohibited. And, if they were contracted when their lords contradicted and were unwilling, they are for this reason by no means to be dissolved *by ecclesiastical judgment*; nevertheless, the owed and customary services ought no less to be rendered to their own lords.

Chapter II

Latin source headnote: A marriage is separated when a free man unknowingly contracted with a female slave, unless afterward, knowing this, he knew her carnally.

Alexander III, to the Provost and Prior of Mortara.

The woman M., *bearer of the present letters*, proposed to us that, after her husband had remained with her for a rather long time, he cast against her the reproach of servile condition, asserting that she was a female slave whom he believed to be free when he took her as wife. *But when a matter of this kind was being treated in the presence of our venerable brother the Bishop of Asti, the woman, because she feared that she would be burdened there, appealed to our hearing. Therefore, because after a little delay the aforesaid man withdrew with the suit unshaken, while both she and her husband were living, through apostolic writings* We order your discretion that, *when you have been required on account of this, you summon the parties before your presence and, after the truth concerning these matters has been investigated more diligently*, if it is established *to you* that the same man knew the aforesaid woman carnally after he heard that she was a female slave, after prior admonition you compel him to *receive* her as wife and to treat her with marital affection. But if it was otherwise, and it happens that a sentence of separation is pronounced, cause the money that the woman granted to the aforesaid man as dowry to be restored to her, *as shall be just*.

Chapter III

Latin source headnote: If the custom in the place is that offspring follow the condition of the father, one born from a free man and a female slave is free, and contracts marriage as a free person.

Urban III, to the Bishop of Rimini.

Although *we judge you sufficient for those matters concerning which your fraternity wished to consult us, nevertheless, because with pastoral solicitude you seek our judgment for greater certainty, we respond to your inquiries by the duty of our office*. Indeed, concerning the matter which was proposed *on your part*, whether a woman can seek judicial separation because the man with whom she contracted, in ignorance of his condition, is alleged to be a slave of a monastery, while on the contrary the same man steadfastly affirms that his father, whose condition he would follow according to the laws of the province, conducted himself as a free man at the time of his death, and that, with a decade now elapsed, he suffered no controversy of status either in the name of his father or in his own name, it appears to us that, by reason of time and in favor of liberty, judgment is more safely to be given for the man's side. [*To these things, etc.* (*Compare chapter* 4, *On the Religious Houses, III.* 36.)]

Chapter IV

Latin source headnote: If a free man contracted with a female slave unknowingly and, from the time he knew, did not consent, the marriage is separated, and he will be able to contract with others.

Innocent III, to Bishop H.

You should know that it has come to our hearing that *our beloved son* G., cardinal priest *of the title of Saint Mary in Trastevere*, legate of the Apostolic See, separated *our beloved son, the noble man* R., a knight, from a certain woman on account of an error of condition. Therefore, *through apostolic writings* we order your fraternity that you *investigate the truth concerning these things more diligently and*, if it is established *to you* that the *same* knight unknowingly contracted with a female slave, in such a way that, after he understood her condition, he consented to her neither by deed nor by word, on account of which he was separated from her consortium by the same cardinal, by apostolic authority grant him the free faculty of contracting with another.

Title X: On Those Born from a Free Womb

Sole Chapter

Latin source headnote: One born from a freeborn or freed woman is free.

Gregory.

We believe it to be indecent that sons begotten from a freed or freeborn woman should be drawn back into servitude. Therefore, we command you [*by the present authority*] that *with these very documents, as we too have learned*, [*with your mind freed from cares*,] *you attend diligently, so that*, if there are no documents on the part of the Church that ought to oppose documents of this kind, you restrain that woman from molesting him without any reconsideration. For it is harsh that, if others confer liberties for *their* reward, they should be revoked by the Church, by which they ought to be made free. [*Again therefore, etc.*]

Title XI: On Spiritual Kinship

Chapter I

Latin source headnote: The sons of two coparents, through neither of whom coparenthood was reached, lawfully contract, unless custom is opposed; but they are separated if coparenthood was contracted through either or both of them. This the chapter says together with the chapter "Concerning This," below under the same title.

Alexander III, to the Archbishop of Salerno.

But as to whether sons or daughters begotten before or after coparenthood can be joined to one another, canons contrary to one another are found according to the customs of different places. And although the first canon issued concerning this prohibits those born after coparenthood from being joined to one another, nevertheless another canon issued later appears to correct the first, by which it is established that, whether they were begotten before or after coparenthood, they can be joined together, with the sole exception of that person through whom coparenthood is reached. Whence it appears *more tolerable* to us that observance ought to be according to the later canon, unless the custom of the church, which would generate scandal, is known to be otherwise.

Chapter II

Latin source headnote: Coparenthood supervening between spouses, knowingly or unknowingly, does not dissolve the marriage.

The same, to the same.

Because you wished to consult us whether, if a man or woman knowingly or unknowingly received his or her child from the sacred font, they ought *to be separated from each other* on account of this *and joined to others*, we respond to your consultation in this manner: although it is generally established that they ought to be separated, nevertheless certain persons, thinking more humanely *and rather*, have established otherwise. Therefore, it appears to us that, whether they did this from ignorance or malice, they are not to be separated from each other, nor ought either to withhold the debt from the other, unless they can be induced to observe continence; because, if it was done from ignorance, ignorance appears to excuse them, but if from malice, their fraud or deceit ought not to patronize them.

Chapter III

Latin source headnote: The sons of two coparents, through neither of whom coparenthood was reached, lawfully contract marriage with one another; nevertheless, if a custom exists that impedes and dissolves such marriages, the custom of the place is to be observed. This the chapter says according to the more common understanding, by touching upon the intent of the chapter.

The same, to the Bishop of Vigilia.

Concerning that which your fraternity asked of us about the sons of two coparents, we respond that, if they are such sons through either or both of whom the parents came to coparenthood, you are by no means to permit them to be joined, and do not postpone separating *them from one another* by pontifical authority if they are joined. But if coparenthood was reached through neither of them, concerning these we wish you to inquire into and more diligently imitate the custom of your metropolitan church or of other surrounding churches, in such a way *indeed* that, if the custom of the same church is not to permit a marriage to be made between them, nor one made to have the strength of firmness, you likewise do not permit a marriage of this kind to be made in the church committed to you; and, if you find any thus joined, do not omit separating them from one another according to the custom of the same churches. But if custom has it that such marriages *are permitted and* sustained, you will be able to dissemble this in your church in such a way that you do not appear to furnish your assent, because, just as it is grave to contemn the ancient custom of surrounding churches concerning these matters, so too it appears graver if, on account of it, you grant your assent to marriages of this kind, since in this way it could be taken as an example.

Chapter IV

Latin source headnote: Between the father of the baptized person and the wife of the person lifting the baptized person, previously known by him, coparenthood is contracted that is effective for dissolving marriage.

Clement III.

Martin took Bertha *as* wife; Lothair joined Teberga to himself, and he received the son of Bertha and Martin from the sacred font. But after L. and B. were taken from their midst, M. contracted with the aforesaid T.; *your fraternity asks us whether such persons are to be separated from each other*. But we have considered that this response should be made to your consultation: since according to the word of the Lord man and woman are made one flesh through marriage, it is clear that Teberga cannot be

joined matrimonially to Martin, who had been her coparent, since Teberga *herself* is known to have been one flesh with him. [*Concerning another matter, etc.* (*Compare chapter* 5, *On One Who Knew, IV.* 13.) *Given at the Lateran.*]

Chapter V

Latin source headnote: Coparenthood contracted through catechism impedes a marriage to be contracted, but does not dissolve one contracted.

The same.

After marriage was contracted between P. *de Rigale* and A. his wife, *as the complaint of the same P. disclosed to us, when they had lived together for two years and the aforementioned P. had received a son from the same wife,* certain blood relatives of the same A., *wishing her to be separated from her husband,* objected against the marriage, *asserting* that the same *A.*, at the first nourishment of consecrated salt, held a son of a former concubine of P. himself *when he was first led into the church; and on account of this, coming to your presence, they said that she ought to be separated from her husband by your judgment. But your fraternity, as we received, without hearing the case, prohibited carnal commerce to them, forbidding P. himself to seek the debt from his wife*. But if it were established *to the Church* that the things we have said were true, nevertheless the contracted marriage would not for that reason be dissolved, and this matter would *indeed* scarcely bring an impediment to contracting marriage. Therefore, *through apostolic writings* We order your discretion to *firmly* enjoin upon the aforesaid P. by our authority that he treat the aforementioned A. as his *own* wife with marital affection and lawfully demand and pay the carnal debt from and to her, whether, *as was said above*, it is established that *A.* herself did this before marriage was contracted with P. or afterward; provided, nevertheless, that, if she did this in fraud for the purpose of separating the marriage, she receive penance for her presumption, with the marriage remaining in its firmness.

Chapter VI

Latin source headnote: Between the father of the baptized person and the person lifting or holding the baptized person, spiritual kinship is contracted that is valid for impeding and dissolving a marriage contracted afterward.

Innocent III, to the Bishop and Archdeacon of Lincoln.

Coming to the Apostolic See, C., an Englishman *by nation, explained to us that, when formerly, constituted in adolescence, he had adhered to a certain woman whom a certain other man had known before, by the counsel of his mother it was done that the same woman lifted from the sacred font a certain boy whom he himself had received from another unmarried woman, in order to destroy the suspicion and infamy of each. But afterward, when he burned more vehemently with love for her, without the counsel of his friends he betrothed her secretly. And when he could not beget offspring from her and endured most grave rebukes from his father, turning over in his mind that he had transgressed in betrothing her, having dismissed her, he set out for Jerusalem for the sake of prayer. But when the same man, returning from the lands across the sea, found that she had received offspring from another, he was unwilling to adhere to her; but on account of the adultery which she appeared thus to have committed, having dismissed her altogether, he transferred himself to a distant region and, finally coming to the city of Gubbio, matrimonially joined to himself there a certain woman with suitable land and a fitting dowry, from whom he confessed that he had received offspring. On this account through apostolic writings* We order your discretion that you *investigate the truth concerning these matters more diligently and,* if it is established that the woman

H. lifted the son of the aforesaid man from the sacred font before he betrothed her as wife, you solemnize a separation between them, with appeal set aside, *faithfully explaining to us the course of the matter through your letters so that, once the truth is known, we may be able to decree whether he can lawfully remain with the second woman*. [*Given near Civita Castellana, on the eighth day before the Ides of October.* 1198.]

Chapter VII

Latin source headnote: If the sons of two coparents, through one of whom coparenthood was reached, contract marriage, they are separated, and those who know the impediment at the time of the contract are bound to denounce it.

The same, to Master S., Canon of Hereford.

Your discretion led you to consult us whether one born before coparenthood can *in the course of time* matrimonially join to himself the daughter of his coparent, male or female, and, if he contracted *with her and remained together with her for several years*, whether they ought *afterward* to be separated, and whether those conscious of such a marriage are bound to accuse it in public. Concerning this we respond *to your discretion in this manner*: persons of this kind cannot contract marriage and, if they have contracted, *by the rigor of law* can be separated from one another; and those who knew of the contract ought to announce it to the Church. [*Given at the Lateran, on the fifteenth day before the Kalends of April.* 1202.]

Chapter VIII

Latin source headnote: Spiritual kinship arises between a baptized person and the son of the person baptizing, impeding and dissolving a marriage to be contracted between them. This the chapter says.

Gregory IX. From your letters we received that, when the woman M. sought Alan as husband before the official of Canterbury, and had proved through suitable witnesses that she was affianced by him and carnally known, when at last the depositions of the said witnesses had been published, the same A. proposed by way of exception that he could not have her as wife because the father of the same woman, who had been a priest, baptized him. But when the same official, not admitting an exception of this kind, rendered a definitive sentence against him, and he appealed to the Apostolic See, we order that, if it is so, you absolve the same A. in this matter from the prosecution of the woman herself, imposing perpetual silence upon the same woman.

Title XII: On Legal Kinship

Sole Chapter

Latin source headnote: Between an adopted person and the daughter of the adopter, marriage cannot subsist while the adoption endures.

Nicholas, in the Responses to the Bulgarians.

If any woman has begun through adoption to be my sister, for as long as the adoption endures, nuptials *certainly* cannot subsist between me and her. [*If therefore, etc.*]

Title XIII: On One Who Knew a Blood Relative of His Wife or Betrothed Woman

Chapter I

Latin source headnote: Affinity supervening after marriage has been contracted does not dissolve the marriage, but impedes the exaction of the debt, and the crime of incest makes one incapable as regards contracting marriage.

From the Council at Metz.

If anyone knowingly fornicates with his stepdaughter, he can neither seek the debt from the mother nor ever have the daughter as wife; neither the stepdaughter nor he will ever at any time be able to join themselves to another in marriage. *Nevertheless, his wife, if she so wishes and cannot contain herself, can marry another if, after she learned that her husband had been in adultery with her daughter, she did not have carnal commerce with him*.

Chapter II

Latin source headnote: Affinity supervening through illicit intercourse dissolves betrothals of the future, but not marriage; and an incestuous person cannot contract.

Alexander III, to the Bishop of Poitiers.

Coming to us, *P.*, bearer of the present letters, *presented to us the letters of your fraternity, from the tenor of which we perceived that he had taken a certain woman as wife, whom certain persons dissuaded him from knowing carnally for one month from the time he took her. But it happened, as he said, that the father ordered his wife, who was the mother of the bride, to lie in this man's bed, and at the devil's suggestion he knew her. But after the month had passed, both the father and other relatives compelled him to consummate marriage with his bride, which he was unwilling to do until he spoke with you concerning this. But you, having heard his confession, transmitted him with your letters to the Apostolic See,* [*consulting whether he ought to have as wife her whose mother he had known, and what penance was to be enjoined upon him.*] We respond to your inquiry in this manner: if *a sin of this kind were secret, he could not dissolve the marriage which he had contracted publicly. But if it is public that* he knew the mother of his bride and never adhered carnally to the bride, penance a little greater than that for adultery is to be imposed upon him; after it, or part of it, has been performed, by dispensation he will be able to contract marriage with another, *and she to marry another, and the bride's father, if he wishes, can dissemble the deed*. But if he knew the bride before the mother or afterward, he can never take her or another as wife.

Chapter III

Latin source headnote: A marriage is not separated upon the statement of one person asserting that affinity between the spouses preceded it.

The same.

But concerning him who proposed that he had known the wife of his *own* brother before she was joined to him in marriage, we respond *this to your prudence*: unless this was public and notorious or proved by suitable witnesses, do not permit him to attack the aforesaid marriage on that occasion. *But concerning that which you assert, that a certain Saracen received sons from a Christian woman whom he had*

retained for fourteen years, we have considered that this response should be made to your discretion: both the Saracen and the woman are to be punished with grave chastisement for so great a transgression.

Chapter IV

Latin source headnote: An incestuous man ought not to contract marriage; but, if he contracts, it holds. And then he is bound to render the debt, but cannot exact it; and he is no less bound to administer necessities to his wife.

Celestine III.

Your letters transmitted to us demonstrated that G., *bearer of the present letters*, after his wife died, knew by carnal union her daughter, namely his own stepdaughter; but afterward, taking another *lawful* woman as wife, he did not fear to commit an illicit thing *no longer secretly* with the *aforesaid* stepdaughter *but* publicly, returning like a dog to its vomit. But because you sought counsel concerning these matters, *by the counsel of our brothers* we respond on the present page that, while cohabiting with and supplying necessities to his *own* lawful wife, he is not to know her for as long as he lives unless he is required by her, and then he is to approach her not without grave sorrow of his *own* heart; and he is also to do penance for the incest and adultery according to the moderation of your judgment for as long as he remains with her; afterward, if he survives her, he will remain perpetually without hope of marriage.

Chapter V

Latin source headnote: A marriage is not separated upon the confession of spouses who say that affinity preceded it, even if the report of the neighborhood agrees. And this is a highly citable and notable case.

The same.

Concerning that *indeed* which you ask, whether a married man who before contracting marriage knew by carnal commingling a blood relative *or relation* of his wife, when each confesses it and some part of the neighborhood is said to cry this out, is to be separated from his wife by the judgment of the Church, we respond to your fraternity that, *if the truth could not otherwise come to light by ordinary judgment*, he ought not to be separated merely on account of their confession or the report of the neighborhood, since sometimes certain persons wish to collude with one another against a marriage and would easily leap to a confession of incest if they believed that recourse would be had to the judgment of the Church upon their own judgment. But the report of the neighborhood is not to be judged so valid that, unless reasonable and trustworthy proofs are added, a marriage well contracted can be annulled. [*In the third place, etc.* (*Compare chapter* 3, *On Presumptions, II.* 23.) *Given at the Lateran.*]

Chapter VI

Latin source headnote: Supervening affinity does not dissolve betrothals of the present.

Innocent III, to the Provost of Magdeburg.

We commend your discretion *in the Lord because in those matters which you reckon doubtful or obscure you consult the Apostolic See, so that henceforth you may proceed in them by its authority*. Indeed, it was proposed on your part *in our hearing* that a certain [*man*] lawfully contracted through words of the present with

a certain woman, whom he afterward, without having known her, handed over to a certain blood relative of his, while she resisted as much as she could. But the latter celebrated the solemnities of marriage with her, although she was unwilling; but, as soon as the woman was restored to liberty, she fled from him and *with insistence* petitioned that she be restored to the former man, *or the former man to her*. We therefore respond to your inquiry in this manner: both is grave penance to be enjoined upon the man for so shameful a crime, and is the woman *herself* to be solicitously admonished on account of public honesty that she neither seek again the first man, whose blood relative knew her, although unwilling, nor return to the second, with whom she cannot commingle on account of the guilt of adultery, but remain in continence until the first has entered the way of all flesh. But if perhaps she cannot be induced to this, the first man is to be compelled to return to her and treat her with marital affection, since he who handed her over to be adulterously used, especially while unwilling, cannot object adultery to her. For although according to evangelical truth neither husband can ever dismiss wife nor wife husband except for the cause of fornication, nevertheless husband or wife cannot always dismiss the other for that same cause, since this can be impeded by a lawful exception or replication. Nor ought the affinity wrongfully contracted between husband and wife after the marriage was lawfully contracted prejudice her who does not exist as a participant in wrong of this kind, since she ought not to be deprived of her right without her own fault; although it is said that a certain predecessor of ours distinguished in a similar case whether the incest or adultery was *namely* manifest or secret, while others assert that a distinction is rather to be made between a proximate and a remote degree.

Chapter VII

Latin source headnote: Carnal union had with a girl of seven years dissolves a marriage afterward contracted with her blood relative. This the chapter says according to one understanding.

The same, to the Archbishop of Besançon.

To your fraternity *consulting the Apostolic See concerning three articles, to whose counsel recourse is to be had by all the faithful in doubtful matters, we respond through the present writings. In the first,* We approve the sentence of separation which you canonically promulgated against him who afterward presumed to join to himself her whose sister, still seven years old, after betrothals had been contracted, he is known previously to have polluted with extraordinary lust. [*The priests, etc.; compare chapter* 6, *On Clerics Who Have Been Excommunicated, V.* 27. *Given at Ferentino, on the twelfth day before the Kalends of June, in the sixth year.* 1203.]

Chapter VIII

Latin source headnote: Affinity caused by illicit union breaks preceding betrothals and deprives one of the faculty of contracting marriage.

The same, to the Bishop of Girona.

From the letters of your fraternity we received that G., their bearer, often carnally knew the mother of the girl whom he had betrothed as wife below marriageable years, and afterward treated the adult girl with carnal commingling. *Whence you humbly petitioned that provision be made for the soul of the man himself, and whether, while he lives, it is lawful for the woman to hasten to second nuptials, since this deed is held as public and notorious.* But we caused penance for the sin to be enjoined upon the same man, responding to

your consultation in this manner: *if the matter so stands*, after they have been *altogether* separated from each other, let the woman not marry another man if, after she learned of the offense of the man and her mother, she did not blush to commingle with him *carnally*. The man also and the mother of the *same* woman ought never to hasten to other nuptials, but are bound always to observe continence and to bewail the enormous offense which they contracted for so nefarious a lust, especially if a lapse of the flesh is by no means feared concerning persons of this kind. [*Given at Ferentino, on the thirteenth day before the Kalends of July.* 1203.]

Chapter IX

Latin source headnote: It says the same with regard to the title as the decretal immediately above.

The same, to the Archbishop of Magdeburg.

Coming to the Apostolic See, the layman E., *bearer of the present letters, by humble confession* proposed to us that, when *formerly* in the time of his infancy, *by the counsel of his friends*, he had sworn that he would take a certain girl as wife as soon as he reached lawful age, the girl's father, after an alliance of this kind had been confirmed on both sides by the obligation of sureties, received him in his own house and reared him together with the girl. But *afterward*, from long association, *having obtained the familiarity of the entire household*, he joined himself carnally to the girl's sister, *of whom he had sworn that he would be the husband, seduced by the instigation of the progenitor of human deception*. At last, overcome by the insistence of his friends, he took as wife her whom he had sworn to take, and, after the nuptials had been celebrated, when opportunity presented itself to him, he knew both. But although he was accused concerning this in your presence, he could not be convicted and was unwilling to confess his offense; but now, returning to his heart *and* repenting of the things committed, he seeks that counsel for his salvation be imparted, *lest he appear to wander to the peril of his soul like a horse and mule in which there is no understanding*. Therefore, since the Apostle commands abstention not only from evil but *also* from every appearance of evil, *through apostolic writings* we order your fraternity that, after suitable penance has been enjoined upon the aforesaid E. for a transgression of such enormity, you counsel him, healthfully admonishing and inducing him, that henceforth he abstain from both. [*Given at Anagni, on the seventh day before the Ides of October.* 1203.]

Chapter X

Latin source headnote: Supervening affinity does not dissolve marriage.

The same, to the Archbishop of Esztergom.

The devotion of your fraternity petitioned *to be instructed through the Apostolic See* whether he who fornicates with the sister of his lawful spouse can afterward remain with his wife, exact the debt, and pay it when required, *or whether on account of this the marriage ought to be separated*. We therefore respond *briefly to your inquiry* that the wife is to be admonished more diligently to abstain from commingling with her husband on account of public honesty and to remain in continence until the husband enters the way of all flesh. But if perhaps, refusing to obey the admonition, she is such that a lapse on her part is feared, her husband will be able and bound, *nevertheless* with fear of God, to pay the conjugal debt to her, since affinity wrongfully contracted after the marriage ought not to harm her who does not exist as a participant in the wrong, *whence she ought not to be deprived of her right without fault*,

[*although it is said, etc. You consulted, etc.; compare chapter* 3, *That When the Litigation Has Not Been Contested, II.* 6. *Given at Rome, etc.* 1206.]

Chapter XI

Latin source headnote: It is summarized above in the immediately preceding chapter.

Gregory IX, to the Bishop of Poitiers.

The petition of the woman Jordana contained that the layman I. contracted through words of the future with her while she had not yet completed the tenth year of her age, and, after she was carnally known within the space of the same year, he did not fear to join her mother matrimonially to himself and to proceed to the embraces of condemned commingling. (And below:) Wherefore the aforesaid I. supplicated that, since she cannot resist the goads of the flesh, we deign healthfully to provide for her, lest she be defrauded of her right without her own fault. On this account we order that, if the matter so stands, you attentively admonish and induce each of them to vow perpetual continence; and, if they cannot be induced to it, after suitable penance for the committed incest has first been enjoined upon the aforementioned I., compel him by ecclesiastical censure to cohabit with her and, when exacted, to render the conjugal debt.

Title XIV: On Consanguinity and Affinity

Chapter I

Latin source headnote: A marriage contracted between affines of the first kind and the fourth degree is separated.

Alexander III, to the Abbot of Cassino.

From your letters *directed to us* we received that, when a certain man had secretly given bridal earnest to a certain widow and known her carnally, *had cohabited with her for a year, the munduald drew the woman's man into a suit, proposing that he had known her, who had been placed in his power, as though a fornicator; then the man and woman affirmed by oath that for a year each had consented to marital union with the other, and henceforth they cohabited together as husband and wife. But when not even to the oath* of the [*said*] *woman did the proctor have faith, he exacted that bridal earnest be given to her publicly*. At last, when the man was prepared to give bridal earnest to her in the sight of the Church, two persons arose, proposing that this man who wished to give her bridal earnest touched the former husband in the fourth degree of consanguinity. But one swore that he had heard it so; the other, *however*, was unwilling to affirm it by oath. *And on account of this, although the man delayed giving bridal earnest to the aforesaid woman, he nevertheless by no means withdrew from cohabitation with her. But in the course of time, at the insistence of the munduald, the aforesaid* [*man*] *publicly celebrated marriage and afterward remained with his wife for nearly a year*. But *now* the first question revived, and two persons swore before the archpriest of Plumbarola, *as you say*, that the first man was joined to the surviving man in the fifth degree of consanguinity. *Whence, because different persons think different things, through our letters you seek to be instructed as to what is to be done in this case*. Therefore, *by commanding through apostolic writings* we order your discretion to summon each party before your presence and cause the witnesses to swear before you, [*and*] *also inquire from whom and when they learned that to which they testify. But if they learned it after the question had been moved, the said marriage is not to be dissolved; likewise not if they learned it from the accusers of the marriage*.

But, after the truth has been more diligently investigated, if through circumspect witnesses *and* persons greater than every exception you find that the first husband touches the surviving man in the fourth degree of consanguinity, do not postpone promulgating a sentence of separation. For, as the canons say, one is equally to abstain from the blood relatives of one's wife as from one's own, *up to the seventh degree*. But we wish it not to escape your prudence that *suitable persons are to be named, and the degrees on each side distinguished* [*and*] *computed*; matrimonial cases are not to be treated by just anyone, but by discreet judges who have the power of judging and are not ignorant of the statutes of the canons *concerning these matters*.

Chapter II

Latin source headnote: Supervening affinity, which is established at least by report, dissolves betrothals of the future.

Urban III, to the Archbishop of Bordeaux.

Concerning that which you assert, that *a certain* young man, with faith interposed, betrothed a certain girl not yet marriageable, who, having now become marriageable, seeks him, and he excepts, saying that he ought not to take her because, after he affianced the same girl, he carnally knew her relation, we respond to your inquiry in this manner: if it is manifest that the *same* young man knew the relation of the aforesaid girl, or, if it is not manifest, nevertheless the report of the place has it so, since she was a betrothed woman only of the future, the same *young man* [*can and*] ought to be absolved from her prosecution.

Chapter III

Latin source headnote: If someone is dispensed so that he can contract in a certain degree otherwise prohibited, it is required that each of those contracting be distant from the stock by the whole degree, especially if custom has this.

Celestine III.

That which *your* affection—(And below:) You asked *us, however,* whether he who is distant from the stock in the sixth or seventh degree through a descending line can be joined matrimonially to her who on the other side is distant from the same stock in the second or third degree through a descending line, on account of the indulgence *of Pope Adrian of happy memory, then Bishop of Albano, legate of the Apostolic See in Norway*, by which it was permitted to the people of that land to be joined in the sixth degree. This appears *properly* to *you* to be able to be done according to a rule *approved by certain doctors*, by which it is said: in whatever degree someone is distant from the stock, he is distant from anyone descending from the same stock through another line; nevertheless, by the custom of the land, if ever such a case arises, the inhabitants *of the land* separate those joined on account of the nearer degree and impede those wishing to be joined, *as the series of your letters demonstrated*. We therefore respond *thus to your consultation*: that indulgence is to be understood in such a way that each of those to be joined is distant from the stock in the sixth degree, *with kinship computed according to the canons*. But if one is distant from the stock in the sixth or seventh degree and the other in the second or third *degree*, they ought not to be joined. Whence in this part we considered it more prudent to defer to the multitude and the observed custom than, with a certain novelty introduced, to establish something else unto dissension and scandal of the people.

Chapter IV

Latin source headnote: Unbelievers joined in a degree prohibited by canonical law are not separated after baptism.

Innocent III, to the Archbishop and Chapter of Tyre.

You wished *to consult us* concerning unbelievers converted to the faith, whether, if before their conversion they were joined according to the institutes of the Old Law *or their own traditions* concerning degrees of consanguinity denoted by the canon, they ought to be separated after baptism. *Concerning this, therefore,* We have considered that this response should be made to your consultation: a marriage thus contracted *before conversion* is not to be separated after the washing of baptism, since the Lord, when asked by the Jews whether it was lawful to dismiss a wife for any cause, responded to them: "What God has joined, let man not separate," intimating by this that marriage existed between them. [*Given at the Lateran, on the third day before the Kalends of January.* 1198.]

Chapter V

Latin source headnote: The husband's blood relatives lawfully contract with the wife's blood relatives. This is the first point. Marriages cannot be contracted in prohibited degrees even if custom has this. This is the second point.

The same, to the Archbishop of Rosano.

Because concerning these *articles which induce some doubt in you, you consider that our counsel should be sought, and you take care to invoke the aid of the Apostolic See for executing those things which the pastoral office demands, we commend your solicitude in the Lord with worthy praises and respond to your petitions with a grateful spirit. Indeed, you signified to us that in your diocese father and son take mother and daughter, two kinsmen two kinswomen, maternal uncle and nephew two sisters as spouses, and husband and wife together baptize another's child. Moreover, certain persons of your diocese touching one another within the third and seventh degree of consanguinity contract marriage with each other, asserting that this is lawful for them by ancient custom.* [(And below:)] Concerning the fact, therefore, that father and son contract marriages with mother and daughter, two kinsmen with two kinswomen, and maternal uncle and nephew with two sisters, we have considered that this response should be made to you: although all the blood relatives of the man are affines of the wife, and all the blood relatives of the wife are affines of the man, nevertheless, between the blood relatives of the wife and the *blood relatives* of the man, no affinity whatsoever has been contracted from the marriage of the same persons, namely the man and wife, on account of which marriage between them ought to be impeded. (And below:) But you ought publicly to prohibit marriage from being contracted within the prohibited degrees and punish presumptuous persons with ecclesiastical severity, notwithstanding a custom which is rather to be called a corruption. [*But when, etc. Given at the Lateran, on the second day before the Kalends of January.* 1199.]

Chapter VI

Latin source headnote: A dispensation obtained from the Pope concerning a marriage contracted between blood relatives is not valid if a false cause is expressed there, unless the Pope afterward confirms it. This the chapter says according to the true and common understanding.

The same.

Because concerning—(And below: [*Compare chapter 6, On Bigamists, I.* 21.]) Moreover, concerning the noble man N., for whose dispensation—namely, the indulgence of remaining with her who touches him in the fifth degree of consanguinity—a false cause had been alleged to us in order to obtain it from the Apostolic See, namely offspring, although before the dispensation was obtained the only daughter he had had entered the way of all flesh, as your consultation contained, you will be able to dissemble so that he may remain in the union thus contracted, since, as you assert, you see grave scandal threatening from the separation. [*Finally you, etc. Given at Segni, on the fifth day before the Nones of October, in the sixteenth year of our pontificate.* 1213.]

Chapter VII

Latin source headnote: Witnesses who depose concerning consanguinity ought to begin the computation from the stock or germ.

The same.

Your fraternity led you to consult us whether the testimony of those persons is sufficient for dissolving a marriage who began to compute the degrees of consanguinity from a maternal uncle and nephew, namely the son of a brother or sister, *when they knew or heard nothing concerning the brothers or their superiors*. We therefore respond to your inquiry in this manner: since marriage obtains much favor, witnesses who, having been produced for obtaining a judicial separation, compute the degrees of consanguinity ought to begin from the stock, that is, from the parents or siblings, and thus distinguish the degrees in order, designating the persons by proper names or equivalent indications, especially since they very frequently furnish testimony from hearsay. Because this is less valid, the faculty is not to be relaxed excessively in an article of this kind, since, by the same [*reason*] by which they would begin the computation from the second, they would begin from more remote persons. [*Consequently, etc.* (*Compare chapter* 26, *On Betrothals, IV.* 1.) *Given at the Lateran, on the Ides of February, in the fourteenth year of our pontificate.* 1212.]

Chapter VIII

Latin source headnote: In the second and third kind of affinity, the prohibition which formerly existed in contracting marriage is removed. Likewise, the prohibition concerning offspring received from second nuptials, who formerly could not contract with the kindred of the former husband, is removed. And the prohibition of marriage does not extend beyond the fourth degree of consanguinity and affinity. This the chapter says; this text is cited daily and is singular in its subject matter.

The same, in the General Council.

It ought not to be judged reprehensible if human statutes are sometimes varied according to the variety of times, especially when urgent necessity or evident utility demands it, since God himself changed in the New Testament certain things which he had established in the Old. Therefore, since the prohibitions concerning marriage by no means to be contracted in the second and third kind of affinity, and concerning offspring received from second nuptials not to be joined to the kindred of the former husband, frequently induce difficulty and sometimes give birth to peril of souls, since when the prohibition ceases the effect ceases, revoking the constitutions issued concerning this with the approval of the sacred council, by the present constitution we decree that those contracting in this manner henceforth be freely joined. Also, henceforth let the prohibition of conjugal union not exceed

the fourth degree of consanguinity and affinity, since in more remote degrees a prohibition of this kind can no longer be generally observed without grave detriment. But the number four agrees well with the prohibition of corporeal marriage, concerning which the Apostle says that the man does not have power over his body, but the woman, nor does the woman have power over her body, but the man, because there are four humors in the body, which are composed of four elements. Therefore, since the prohibition of conjugal union has now been restricted up to the fourth degree, we wish it to be perpetual in such a way, notwithstanding constitutions issued concerning this long ago either by others or by us, that, if anyone presumes to be joined contrary to a prohibition of this kind, he is defended by no length of years, since length of time does not diminish sin but increases it, and crimes are the graver the longer they hold the unhappy soul bound.

Chapter IX

Latin source headnote: One distant from the stock in the fourth or a nearer degree can contract with one distant in the fifth or a more remote degree. This the chapter says together with the gloss.

Gregory IX. A man who is distant from the stock in the fourth degree, and a woman who on the other side is distant in the fifth, can lawfully be joined matrimonially according to the approved rule by which it is said: in whatever degree the more remote person differs from the stock, he or she differs from anyone descending from the same stock through another line.

Title XV: On the Frigid and Those Rendered Impotent by Sorcery, and on Impotence for Intercourse

Chapter I

Latin source headnote: If, when the husband seeks judicial separation and asserts himself to be impotent, the woman confesses the same thing, with canonical solemnity observed, the marriage is dissolved without distinction. But if the Church is deceived, the first marriage is restored. But if, when the woman acts, the man asserts himself to be potent, unless he is convicted by inspection of the body or another indubitable mode, the woman is not heard. But if the man confesses the same thing or is convicted, the marriage is separated, and license to contract is given to the woman. This the chapter says according to Hostiensis.

From the Brocardicum, Book XIX. You received a woman and had her for some time, for one month or for three, or *lastly* for a year, and now for the first time you have said that you are of a frigid nature, so that you could not have intercourse with her or with any other woman; *and* if she who ought to have been your wife affirms the same things which you say, and *if* it can be proved by a true judgment that it is as you say, you can be separated, yet on this condition: if afterward you take another woman, you are to be adjudged guilty of perjury and, after penance has been performed, you will again be bound to restore the former marriage. But as for her, if she first, after a year or half a year, shall *herself* have complained to the bishop or *to* his delegate, saying that you had not known her, *and denies that there was any commingling between you*, while you affirm the contrary, you are to be believed because you are the head of the woman; for, if she wished *to complain*, why was she silent so long? For the *woman* could know quickly and in a short time whether you could have intercourse with her. But if *she* shall have complained immediately in that new condition, after one month or *at the latest after* two [*months*], to the bishop or *to* his delegate, saying: "I wish to be a mother, I wish to

beget sons, and therefore I received a husband, but the man whom I received is of a frigid nature and cannot do those things for which I received him," if it can be proved by a right judgment, you can be separated, and she, if she wishes, may marry in the Lord.

Chapter II

Latin source headnote: One impotent for union is impotent to contract marriage, whether the impediment is of age or of nature.

Alexander III, to the Bishop of Amiens.

We hold it pleasing and acceptable that you consult the *Apostolic See concerning those matters which exist as doubtful to you, and your fraternity appears deserving of no small commendation on this account. Indeed, on your part it was intimated to us that a certain woman of your episcopate married a certain man, ignorant that because of the rupture of each groin his genitals had been cut away, and was not known by him; and he, having now become leprous, rendered himself and his property to a house of the infirm. But the woman, having returned to her paternal home, as a young woman desires to marry another man and to be joined by a conjugal covenant. But although the Roman Church has not been accustomed to divide those lawfully joined because of natural frigidity or other spells, nevertheless, if the general custom of the Gallican Church has it that marriages of this kind are dissolved, we will patiently tolerate it if, according to that custom, you grant the same woman the faculty of marrying whom she wishes in the Lord*. For just *as* a boy who cannot render the debt is not fit for marriage, so *also* those who are impotent are reckoned by no means fit to contract marriages. [*Indeed, concerning the canon, etc.; compare chapter* 10, *On Regular Clerics, III.* 31.]

Chapter III

Latin source headnote: A natural impediment to intercourse, irreparable by the art of physicians, impedes marriage.

The same.

From your letters we received that a certain man of sixteen years *or more* took as wife *a* certain girl of thirteen years; when he was *bound to, and* could not, render the debt, the woman contracted so grave an infirmity that she was made altogether useless to the man, and her sexual organ *was* obstructed in such a way that the man could not commingle with her. We therefore respond that, if the woman contracted that defect from nature and cannot be aided by the work of physicians, grant the man the free faculty of taking another. *But if this proceeded from the fault of the man, although it is not safe for it to be granted to him that he take another, nevertheless you will be able to tolerate it under dissimulation, because it is safer to have one woman as wife than to sin with many.*

Chapter IV

Latin source headnote: One who knowingly contracts with a woman impotent for union is not separated from her.

Lucius III.

We respond to your consultation, by which you consulted us whether women whose genital passage is closed, and who are unable to commingle with males, can contract marriage and, if they have contracted, whether it ought to be rescinded, in this manner: although it appears incredible that

anyone would contract marriage with such women, *and although we do not have an express canon concerning this kind of matter, nevertheless the sacrosanct* Roman Church has been accustomed to judge in similar cases that those whom they cannot have as wives they are to have as sisters. *Nevertheless, such women have sometimes been accustomed to be aided by medical skill so that they can suitably render and receive the debt.*

Chapter V

Latin source headnote: If impotence for intercourse is established, the marriage is immediately separated; otherwise, the spouses will cohabit for three years. And if with seven relatives as oath-helpers they swear that they gave their effort to carnal union and could not be joined, they are immediately separated. It is commonly summarized thus.

Celestine III.

The praiseworthy—(And below: [*Compare chapter* 2, *While Litigation Is Pending, II.* 16.]) *Solicitously also at the last,* You asked how much time is to be granted to those naturally frigid for an experiment of nuptial union, *in which, if they fail, they are separated*. But we, *although different times are conceded concerning this in the ancient canons as well as the laws, nevertheless,* think this in the present consultation: *if one naturally frigid cannot use her whom he took as spouse*, from the time the marriage was celebrated, if the frigidity cannot be proved beforehand, they are to cohabit for three years *according to the legal Authenticum*. When this has elapsed, if even then they are unwilling to cohabit, and according to the decree of Gregory the woman, *if* by a just judgment she can prove concerning the man that he cannot have intercourse with her, let her receive another; but if he takes another, let them be separated. But if both consent to be together, let the man have her, although not as wife, at least as sister. But if both confess that they never knew each other, with seven relatives as oath-helpers, or, if relatives are lacking, with seven reputable neighbors as oath-helpers, let each, touching the sacrosanct Gospels, say by oath that they were never made one flesh through carnal union; and then it appears that the woman can hasten to second nuptials. But if he takes another woman, then let those who had sworn be held guilty of perjury and, after penance has been performed, be compelled to return to the former marriage. [*Finally, etc.; compare chapter* 1, *On Exceptions, II.* 25.]

Chapter VI

Latin source headnote: Because of a woman's constriction, if it appears that, apart from a divine miracle, she cannot be rendered capable without bodily danger, the marriage is separated; nevertheless, it is restored if it afterward appears that the Church was deceived.

Innocent III, to the Bishop of Auxerre.

We received the letters of your fraternity containing that the woman O. married a certain man in lawful wedlock; she lived with him for many years, but could not be known carnally by him. But although you had been instructed concerning this through your archpriest, nevertheless, wishing to have fuller certainty *concerning this*, you summoned to your presence certain provident and honorable matrons of her parish, strictly enjoining upon them under peril of their souls that they prudently inspect the woman herself and diligently inquire whether she was suitable for virile embraces; and they at last steadfastly asserted to you upon their faith that the same *woman* could never be a mother or spouse, as one whose natural sexual organ was lacking. Whence you solemnized a separation

between her and *that* man, inducing the *same* woman to transfer herself to some religious house, being about to observe perpetual continence, and granted the man license to take a wife *in the name of the Lord*, because he desired to become a father. But it happened afterward that the *same* woman found someone who removed that bodily obstruction and, casting away the continence which she promised, *after she had had* [*intercourse with*] *another man, additionally married* G., bearer of the present letters, *on whose behalf you humbly supplicated that we deal mercifully with them*. Therefore, although you expressed to us only incompletely how the said woman promised that she would observe continence—whether, namely, by a simple word or a solemn vow, whether she passed to religion, as she promised, or remained in her house contrary to her promise, and how she caused that obstruction to be removed, whether, namely, by the art of a physician, intercourse with a man, or any other mode—nevertheless, perceptively considering that the impediment was not perpetual which, apart from a divine miracle, could be removed by human work without bodily danger, we know that the sentence of separation was rendered through an error, although a probable one, since it is manifest from the subsequent fact that she was knowable by him whose like commingles with her, and therefore we say that marriage existed between the *woman herself* and the first man. Wherefore we adjudge that there is no marriage between her and the aforesaid G., and we command them to be separated from each other. And if the aforesaid woman passed to religion, as she asserts that she promised, let the first man, who did not know her, remain with her with whom he afterward contracted by authority of the Church; otherwise, let the *same man*, after dismissing *her whom he afterward brought in*, be bound to return to her with whom he first contracted, unless that woman bound herself by a vow to observe continence, so that by this she is understood to have fornicated with the aforesaid G., or unless she commingled with another man in a fornicatory manner, so that the first man, under pretext of the fornication *which* [*she*] *committed*, wishes to decline her consortium. For if she promised only by a simple word that she would observe continence and afterward married the aforementioned G. in the sight of the Church, for as long as this article was doubtful, it ought not to be presumed that she fornicated with him; but from now on she ought not in any way to remain with him. But through these things you should know that the following question is resolved: whether she who is so constricted that she can carnally commingle with no one unless through an incision or in some other way violence is brought upon her—not only slight violence but perhaps so grave that peril of death is feared from it—ought to be declared suitable for contracting marriage. Likewise, whether she who is so constricted for the man whom she married that she can never be deflowered by him, if she is separated from him by the judgment of the Church and marries another [*man*] for whom she is not constricted and through frequent use of the second man is rendered suitable even for the first, ought to return to him with whom she first entered the conjugal covenant. But concerning such matters judgment is not easily to be given, since the final judgment depends upon the future. *You therefore, according to that which is distinguished above, are to cause what we have decreed to be firmly observed through ecclesiastical censure, with appeal set aside.* [*Given at Ferentino, on the fifth day before the Nones of July, in the ninth year.* 1206.]

Chapter VII

Latin source headnote: If a wife says that the husband with whom she cohabited for three years does not have the potency for intercourse, when they swear this with seven relatives as oath-helpers, the marriage is separated. This the chapter says by adhering to the words of the letter.

Honorius III.

Your letters exhibited to us contained that, when the matrimonial case which is pending between the woman M. and A. her husband, *of the diocese of Arras*, had been committed to you by Pope Innocent, our predecessor *of good memory*, the said M. proposed *before you* that, although *already* eight years earlier she had been joined matrimonially to the said A. and had cohabited with him for a long time, *nevertheless, although she was capable of intercourse with a man, she had never been known by him, but* still remained intact because her aforesaid husband did not have the potency for intercourse; wherefore she sought that a separation be solemnized *between them*. But the aforesaid A. *nevertheless* confessed that he had never known her, *although she had exhibited herself ready and prepared for his service, but* nevertheless asserted that he had the potency to know other women. But you, lest *perhaps* they confess this in fraud, caused the said woman to be inspected by matrons of good reputation, trustworthy and experienced in the nuptial work, who furnished testimony that she still remained a virgin. Afterward, through the priest from whose parish the *aforesaid* man came, you caused it to be *diligently* inquired whether the *man* himself had known any woman, and through the inquiry itself it could not be established to you that any woman had been carnally known by him. But while the woman *insistently* sought judicial separation and said that she wished to be a mother and to beget sons, and while the man proposed that he was prepared to stand by the counsel *and will* of the Church, you enjoined upon them that they *humbly receive and* do penance for the things committed, and thus perhaps it would please God, who was the institutor and author of marriage, that they consummate the work of marriage. After several terms *granted to them by you for cohabiting with one another*, returning to your presence, with consonant voice they said that they could not commingle carnally. *On account of this, with their consent you considered that a case of this kind should be left to apostolic judgment*. Therefore, *again through apostolic writings* we order you that, if it is so and it is established to you that the aforesaid man and woman lived together for a continuous three years within the aforesaid years, and they affirm by oath with seven relatives as oath-helpers that they could not commingle carnally, you pronounce a sentence of separation between them.

Title XVI: On Marriage Contracted against an Interdict of the Church

Chapter I

Latin source headnote: A marriage made or contracted against an interdict of the Church or a judge is not dissolved for this reason alone; nevertheless, penance is imposed upon those contracting thus, and they are separated until the cause of the interdict is heard. This in effect is what this entire title says.

Alexander III, to the Bishop of Padua.

The letters which your fraternity sent to us expressly declare that, when a certain *parishioner of yours*, in the presence and with the consent of his sister, who was already marriageable, had affirmed by a furnished oath that he would give her to a certain man as wife, and she, not many days later, voluntarily receiving the gifts and presents of the man according to the custom of the land, had often embraced him as her own husband, at last, after her brother died, she permitted herself to be betrothed by her husband's own brother, and falsely avers that she had been known by him. And when you publicly prohibited her from joining herself to either of them or to anyone else, she, having spurned your admonitions, did not fear to marry another. Finally, when *you had summoned both before you and* had commanded the woman to return to her mother's house, she appealed *to* our hearing. *But*

because it lies upon our solicitude to correct the transgressions and enormities of others and to recall them to the measure and form of rectitude, through apostolic writings we order your fraternity that, if it is so, *as was narrated above*, lest your mandate appear *to be* contemptible, you compel the aforesaid woman to return to her mother's house *with every appeal and excuse ceasing*; and, after worthy penance for so great a transgression has been imposed upon her, when *she* has remained in her mother's house for a month, permit her to return to the third man *and to be lawfully joined to him*.

Chapter II

Latin source headnote: Betrothals of the future, even when contracted with one woman against an interdict of the Church, do not have the power to dissolve a marriage afterward contracted with another.

The same, to the Bishops of Worcester and Baronia.

From the letters of *our venerable brother* the Archbishop of Canterbury, *legate of the Apostolic See*, it came to us that, when G. of Saint-Léger had betrothed his absent daughter M. to a certain *young man* named R., *afterward, at the procuring of certain blood relatives of the woman herself, the aforementioned R. contracted marriage with her while she was present through words of the present tense, as is said; faith being corporally furnished on each side that henceforth the man would conduct himself toward the woman as toward a lawful wife, and she would reverently obey him without contradiction as her lawful husband; and nothing was lacking except the solemnity to be celebrated in the face of the Church, which on account of the season of Lent could not then be carried into effect*. Afterward, when a suspicion arose that the aforesaid R. desired to pass to other vows, the case was brought to the examination of the *aforementioned* archbishop, who under threat of anathema prohibited him, *as we received from his letters*, from passing to second vows before the aforesaid matter was fully established. But he, having contemned the aforesaid prohibition, solemnly joined to himself in the face of the Church the daughter of V., *named Matilda*, as wife. *But afterward, when the two women and the man had been constituted before the archbishop, the aforesaid R. publicly confessed that he had contracted marriage with Maria, as was said above, and afterward, seduced by the depraved suggestion of certain persons, had taken the other, namely Matilda. But Maria steadfastly asserted that her father had not moved the complaint from her will, adding that between her and the aforesaid R. no obligation had intervened except faith alone concerning contracting marriage; because he had not observed it, she was by no means bound to observe it, and therefore, because he was leaving her whom he had taken second.* But when *she petitioned that the aforesaid R. be restored to her as her own husband, and* the archbishop wished to hear the first marriage, *especially because the women were said to touch one another by consanguinity, and through this the vice of both adultery and incest was feared*, the said M. emitted the voice of appeal *to the Apostolic See and fixed the feast of the Circumcision just passed as the term for the appeal*. Deferring to her appeal, the archbishop more strictly interdicted the same *Maria*, under *peril of her soul and* threat of excommunication, from marrying anyone until the case itself received its due end *before us or before judges delegated by the Apostolic See*. Nevertheless, trusting in the remedy of appeal, she married a certain other man named V. *nevertheless*. *And, cited concerning this before the archbishop, she was unwilling to appear on account of the appeal which she had objected. Therefore, since it did not appear to us that the matter was to be concluded while the parties were absent, committing it to your experience, in which we fully confide, by authority of the present letters* We order that, *after the parties have been summoned before your presence, you investigate the truth more diligently and*, if nothing is established which impedes except the consent of the future which is asserted to have preceded between the aforesaid R. and M., with the obstacle of appeal removed you adjudge that the second marriages are to be inviolably

observed. For although they ought not to have passed to second vows against the interdict of the Church, nevertheless it is not fitting that on account of this alone the sacrament of marriage be dissolved. Nevertheless, other penance will have to be imposed upon them because they did this against the prohibition of the Church. [*Given on the Nones of February.*]

Chapter III

Latin source headnote: If those who were said to be blood relatives contracted against the command of a judge, they ought to be separated until the case is heard.

The same, to the Bishop of Padua.

Concerning the woman—(And below: [*Compare chapter* 6, *On Betrothals, IV.* 1.]) But those who are prohibited from being joined on account of consanguinity and afterward receive one another contrary to the interdict of the Church you ought to subject to excommunication until they are separated for so long as it takes to be lawfully ascertained whether their marriage can and ought *by* law to stand.

Title XVII: Which Children Are Legitimate

Chapter I

Latin source headnote: A natural child, begotten of an unmarried man and an unmarried woman, is legitimated by the subsequent marriage of the parents, even as regards inheritance.

Alexander III.

H., *bearer of the present letters*, complained to us that, when he took as wife a certain woman, *the niece of R.*, the *aforesaid* R., the woman's paternal uncle, endeavors to disinherit her because she was born before the betrothal of her mother, although afterward, *as is said*, the father of the aforesaid woman took her mother as wife. Therefore, *by commanding through apostolic writings* we order your fraternity that, if it is so, *notwithstanding any contradiction or appeal*, you adjudge her *to be* legitimate, prohibiting the aforesaid R. *on our part and yours* from bringing molestation or burden upon the *often-mentioned* woman *and her heirs* concerning the paternal inheritance on this occasion. But if he presumes to act contrary to this, strike him with ecclesiastical severity *with the remedy of appeal removed*.

Chapter II

Latin source headnote: When a marriage contracted in the face of the Church is separated, children begotten or conceived before the sentence are legitimate.

The same.

Since a sentence of separation was canonically rendered between I. Vetus, *your fellow citizen*, and the woman T., their children, *who were born before the sentence itself, and he who was then conceived*, ought not to sustain loss from this, since their parents are known to have publicly contracted *marriage* with each other without contradiction of the Church. Therefore we decree that their children whom *they* had before the separation, and those who had been conceived before the sentence was rendered, are to be held no less legitimate, and that they succeed to the paternal goods by hereditary right and are nourished from the resources of their parents. *Therefore, through apostolic writings we order your whole body that you not prohibit the aforesaid children of the aforementioned I. and the aforesaid woman from succeeding*

to the paternal goods and being nourished from them, nor permit molestation or burdens to be brought upon them by anyone on the occasion of the separation between their parents.

Chapter III

Latin source headnote: One stands by the word of a man and woman who deny that someone is their son, unless the contrary is proved by indications and witnesses.

The same, to the Archbishop of Rouen.

Your letters transmitted to us contained that, when N., *your citizen*, had nourished a certain boy until youth, his wife M., then not betrothed to him, cohabiting with him, afterward, *as is said*, he lawfully betrothed her and received sons from her. When these sought the paternal inheritance, the aforesaid young man contradicted them, conducting himself as son and heir, although he was called a bastard by the neighborhood, which believed him to be their son. But the aforesaid N. and his wife *Matilda* denied that the aforesaid young man was their bastard or lawful son, but said that they had nourished him from a regard for piety. But when the question had been moved before you, and the aforesaid young man was bound with the bond of excommunication because he was unwilling to stand by the law, *you wished to consult us as to what you ought to do concerning this. Concerning this, therefore,* We respond *thus* to your consultation: in such a case one must stand by the word of the man and woman unless it is established to you by certain indications and witnesses that the aforementioned young man is their son.

Chapter IV

Latin source headnote: The offspring whom a wife conceived from adultery while her husband was living is illegitimate, whether she remains with the adulterer or with the husband.

The same, to the Bishops of Exeter and Winchester and the Abbot of Hereford.

The cause which—(And below: *Compare chapter* 17, *On the Office of a Delegated Judge, I.* 29.) If, *after the parties have been summoned before your presence, it is lawfully* established to you that the *often-mentioned* Agatha was born of the woman Anelina during the time of Alan, her husband, while she was remaining with him as with her husband, or while R., the father of the said Agatha, publicly kept A. herself while she still had a husband, adjudge that she was not the lawful daughter of the same R., because she could not be a wife who, staining the bed of her husband, presumed [*both*] to be joined *and to cohabit* with another while he lived. *Moreover, etc.* (*Compare chapter* 3, *On Fraud and Contumacy, II.* 14.)

Chapter V

Latin source headnote: A question of birth, opposed to one seeking an inheritance before a secular judge, is to be referred to an ecclesiastical judge. This is what it says, and the text is very noteworthy and capable of being cited.

The same, to the Bishop of Exeter and the Abbot of Hereford.

R., the bearer of the present letters, *coming to our presence not without great danger to his body, set forth to us in his complaint that, although his grandfather had had two wives, from one of whom his father proceeded, while from the other he begot Hugh, his paternal uncle, the same* [*Hugh*] *violently detains forty acres of land which fell to*

him and to the father of the same R., and is unwilling to furnish to the same R., who ought to succeed to the paternal goods, the portion due. But when the same R. had drawn H. into a lawsuit before a secular judge concerning the inheritance of the grandfather of the same R., the father of the said H., he presumed to object to him that his father had not been born of a lawful marriage, and that therefore he could claim nothing [*for himself*] from the inheritance of his *late* grandfather by right of succession. *But* finally, when the question of birth had *for a long time* been treated before *our venerable brother* the Bishop of Norwich, an appeal was made to our hearing. *But, when he came, the other party disdained to present himself to us either in person or through another.* Therefore, *being unwilling for the case itself to be prolonged any further, committing it to your experience, by apostolic writings we command* your discretion that, *after summoning both parties before your presence and more fully hearing and considering the arguments on each side, you* terminate the case concerning the question of the birth of the father of the same R. within two months *after the receipt of these letters*, with the obstacle of appeal removed. But if within two months the aforesaid H. cannot lawfully prove what he objected *to him concerning the paternal inheritance*, then intimate to the secular lord, under whose judgment the case concerning the inheritance is being conducted, that on account of the question of birth he is not to omit to hear and decide the case concerning the inheritance.

Chapter VI

Latin source headnote: Natural children are legitimated through a subsequent marriage of their parents, but spurious children are not. This is what it says, by adhering to the words of the letter; and it is a famous chapter and is cited daily in both forums.

The same, to the Bishop of Exeter.

So great is the force of marriage that those who were begotten beforehand are held legitimate after the marriage has been contracted. But if a man, while his wife is living, has known another woman and has received offspring from her, although after the death of his wife he marries the same woman, the son will nevertheless be spurious and is to be repelled from the inheritance, especially if either of them contrived anything toward the death of the prior wife, *since they could not contract a lawful marriage with one another*.

Chapter VII

Latin source headnote: The Church does not take cognizance of a civil case between laymen; it does take cognizance, however, of whether someone was born of a lawful marriage.

The same, to the Bishops of London and Worcester.

We *some time ago* committed to you for termination the case which is known to be conducted between R. and F. concerning the fact that the mother of the *already-mentioned* R. is said not to have been born of a lawful marriage. But because *in* our letters we caused it to be inserted that, before entry into the principal case, you were to cause the often-mentioned R. to be restored, *with appeal ceasing*, to possession of [*their*] entirety, of which he was possessor when his grandfather took up the journey of setting out for Jerusalem, if he had been despoiled of that possession through violence: we, considering that it pertains to the king, not to the Church, to judge concerning such possessions, lest we seem to derogate from the right *and dignity of our dearest son in Christ Henry*, king [*and prince*] of the English, who, *as we have received, was moved and disturbed because we wrote concerning the possessions, since* he

asserts that judgment over them pertains to himself, *will and, by apostolic writings, command* your fraternity that, leaving judgment over the possessions to the king, you take fuller cognizance of the principal case, namely whether the mother of the aforesaid R. was born of a lawful marriage, and terminate a case of this kind *according to the tenor of our other letters, with appeal removed*; although it seems incongruous that the marriage of the mother of the aforesaid R. should be attacked, which, as is said, was not attacked while she was living.

Chapter VIII

Latin source headnote: If a woman, separated from the first man by a judgment of the Church, contracts with a second while the first is living, the offspring whom she received from the second will be legitimate.

The same, to the Bishop and Archdeacon of Vicenza.

It has been brought to our hearing that, when H., *son of the late Lazarus*, had crossed to the regions of Constantinople and, remaining there for ten years and more, did not return to I., his wife, she lodged a complaint against him before *I., formerly* Bishop of Vicenza, of good memory, and alleged likewise that she could not wait for him any longer. But the bishop, as a provident and discreet man, commanded the parents of the *aforesaid* man to send for him and recall him to his own country. And when, after a long space of time had elapsed, the *aforesaid* man did not return to his own country, the bishop, in the sight of the Church and after hearing the arguments of the woman, promulgated a sentence of separation between them and granted the woman *full* faculty to marry another *man*. Therefore, *because the truth of this matter is not established to us, by apostolic writings we command* your discretion that *you diligently investigate the matter itself, and*, if it is established *to you* that the bishop pronounced a sentence of separation between them, you adjudge legitimate *her* sons whom she begot of the other man, to union with whom she passed by authority of the aforesaid bishop *without question and contradiction by the Church*, not permitting them to be excluded from the inheritance on this occasion. *And if anyone wishes to strive against this, by apostolic authority you are to impose perpetual silence upon him.*

Chapter IX

Latin source headnote: Children born of a clandestine marriage approved by the Church are legitimate. This is what it says, by adhering to the letter.

The same, to the Bishop of Beauvais.

What to us—(And below: [*Compare chapter* 2, *On Clandestine Betrothals, IV.* 3.]) But if any have been begotten of a clandestine marriage afterward approved *and held ratified* by the Church, adjudge them legitimate children and heirs.

Chapter X

Latin source headnote: Those born of a marriage contracted contrary to the justice of public propriety are illegitimate and are to be excluded from the inheritance of their parents. And hold this case in mind, because it often happens through ignorance.

Celestine III, to the Archbishop of York.

When it was reported to us—(And below:) We respond *in this manner* to your fraternity: because the justice of public propriety prohibited it, marriage could not be contracted between them, and the marriage contracted ought to have been separated; and through this, since the children are excused neither by permission of the Church nor by paternal ignorance, they do not seem in any respect to be admitted to the succession of the paternal goods.

Chapter XI

Latin source headnote: To prove offspring illegitimate, it does not suffice to prove an impediment to the marriage, if the marriage was contracted in the face of the Church.

The same.

It has indeed come to us from the representation of the widow L. that, although a marriage had been lawfully celebrated between G., her father, and A., her mother, and they remained peaceably for as long as they lived, after their death certain persons, asserting that she had been received from an unlawful marriage, attempt to remove her from the paternal inheritance as illegitimate. Therefore, by apostolic writings, we command *your discretion* that, if it is so, by *our authority* you declare the said widow legitimate.

Chapter XII

Latin source headnote: One stands by the statement of witnesses who prove someone legitimate, although the report of the neighborhood and the treatment by the parents holds the contrary.

Innocent III.

Through your letters you intimated *to us* that R., having received offspring from a *certain* woman whom, according to the opinion of the greater part of the neighborhood, he kept as a concubine, afterward married one woman and, when she had died, another; and she from whom he had received offspring joined another man to herself. But in the course of time the same R., in the presence of many, affirmed by his own oath that he had first pledged as wife the woman whom he had seemed to keep as a concubine before he had begotten a son of her; and afterward, when *he had lived for six years and more, while* he was at the point of death, instituting in his testament as heir the one whom he had received from her, he called him his legitimate son. But when it had been committed to your inquiry *and decision* whether the son so received was a legitimate heir of R. himself and was to be admitted to his patrimony, you—besides the fact that from a certain decretal of Pope Alexander, our predecessor of good memory, you believed that the word of the man and woman was to be stood by concerning this—after receiving witnesses produced by the son of the same R., through whom he lawfully proved that the aforesaid R. had pledged his mother in the chapel of Saint Sergius, adjudged him to be the legitimate heir of R. himself. But we, considering that what is done in truth is of greater weight than what is conceived in pretense, although the *already-mentioned* R., when, having dismissed her whom he had kept as a concubine, he passed to other vows, seems *by* that very deed to have denied the marriage that had been celebrated between them, nevertheless, because the betrothal proved through lawful witnesses shows that they had been joined matrimonially, whether the betrothal itself was of the present, so that through lawful consent expressed by words of the present the bond of marriage was celebrated between them, or was through words of the future followed by carnal union, relying not so much on the decretal of our said predecessor, which speaks in a dissimilar case, as on the

proofs introduced, we respond that you proceeded lawfully, confirming your sentence by apostolic authority, *and we fortify it by the protection of the present writing, by apostolic authority enjoining upon you by the present letters that, a warning having been premised, through ecclesiastical censure you cause the sentence itself to be inviolably observed.* [*Given at Rieti, on the third day before the Nones of August,* 1198.]

Chapter XIII

Latin source headnote: In the lands of the Church the Pope can freely legitimate illegitimate persons, but in the lands of others he cannot, unless for very arduous causes, or unless in spiritual matters; then, however, he is understood indirectly and by a certain consequence to legitimate them also with respect to temporal matters. Yet this last point is not without scruple. This is what it says according to the understanding that pleases Panormitanus, and it is a difficult and very famous chapter.

The same, to the nobleman G. of Montpellier.

Through our venerable brother the Archbishop of Arles, *coming to the Apostolic See*, your humility supplicated us that we should deign to adorn your sons with the title of legitimation, so that the objection of their birth would not harm them so as to prevent them from succeeding you. That the Apostolic See has full power concerning this, however, appears from the fact that, after consideration of various causes, it has dispensed with certain persons begotten less than legitimately—not only natural children, but also adulterine children—thus legitimating them for spiritual acts so that they can be promoted as bishops. From this it is believed more likely and reckoned more probable that it is able to legitimate them for secular acts, especially if besides the Roman Pontiffs they recognize among men no other superior who has the power of legitimating; because, since greater providence as well as authority and fitness is required in spiritual matters, what is granted in the greater seems to be lawful also in the lesser. This also seems capable of being proved through a similar case, since by the very fact that someone is raised to the summit of episcopal dignity, he is exempted from paternal power. Moreover, even if a mere bishop knowingly ordained another's slave as a priest, although the ordainer would be bound to make satisfaction to the master *according to the canonical form*, the ordained man would nevertheless escape the yoke of servitude. Indeed, it would seem monstrous that one who was made legitimate for spiritual actions should remain illegitimate with respect to secular acts. Hence, when a dispensation is made in spiritual matters, consequently a dispensation in temporal matters is understood. The Apostolic See, however, can freely effect this in the patrimony of blessed Peter, in which it both exercises the authority of the Supreme Pontiff and executes the power of the supreme prince. *Therefore, since from these things the authority of legitimating seemed to reside with the Roman Church not only in spiritual matters but also in temporal matters, the same archbishop was humbly requesting on your behalf that we grant your sons grace concerning this, on account of your merits and those of your progenitors, who have always persisted in devotion to the Apostolic See.* But he seemed to draw greater boldness for requesting from the fact that *he was not compelled to seek an example far away, but was able to allege in favor of a petition of this kind what he said that we ourselves had done in a similar case.* For since *our dearest son in Christ Philip*, the illustrious king of the French, dismissed *our dearest daughter in Christ* I., the *illustrious* queen *of the French*, and afterward received a boy and a girl from another woman brought in over her, and you similarly, after the lawful wife had been excluded, brought in another woman over her, from whom you received sons, it was believed that the benignity of the Apostolic See should dispense with yours just as with the sons of the same king, *especially since*

greater necessity commended it, and you are more specially subject to us: for the king of the French received from the queen of the French, formerly of illustrious memory, a lawful heir, who is hoped and believed to be about to succeed him upon the throne of the kingdom; but you do not have from your lawful wife a male heir who may succeed you both in devotion to us and in your own inheritance. Moreover, since the king himself is subject to us in spiritual matters, you are subject to us both in spiritual and in temporal matters, since you possess part of your land from the Church of Maguelone, which it temporally recognizes through the Apostolic See; wherefore the same archbishop asserted that, with the Church of Maguelone mediating, you are temporally subject to us. But if the truth is diligently inspected, not a similar but a very dissimilar matter is found. For the king himself was separated from the *aforesaid* queen by sentence through the Archbishop of Reims, of *good memory*, legate of the Apostolic See; but you separated your wife from yourself, *as is said*, by your own rashness. He also brought in another woman before the prohibition against contracting with another had reached him, from whom he is known to have received twin offspring; but you attempted to bring in another woman in contempt of the Church, *on account of which the Church itself exercised against you the sword of ecclesiastical vengeance.* Moreover, the king himself objected against the marriage of the *aforesaid queen* an impediment of affinity and introduced witnesses before the aforesaid archbishop; because his sentence was quashed solely on account of the judicial order not having been observed, after the restoration of the [*aforesaid*] queen we considered that other judges should be deputed to him *concerning this*. But you objected to your wife nothing *as is asserted* that would induce a separation, since, even if fidelity of the bed is one of the three goods of marriage, nevertheless its violation would not have violated the conjugal bond. Therefore, as long as the question of the affinity objected is pending, it can not without reason be doubted whether the sons of the same king were legitimate or illegitimate. For if the affinity is proved, it will appear that the aforesaid queen is not the wife of the king, and by consequence the other woman will seem to have been lawfully joined to him and to have borne him legitimate sons. *But concerning yours, neither do you yourself propose that they were born legitimate, nor is this presumed by any reason.* Moreover, since the king *himself* recognizes no superior at all in temporal matters, without injury to another's right he was able to submit himself in this matter to our jurisdiction, *and did submit himself*. In this it *perhaps* would seem to some that he was able to dispense by himself, not as a father with sons, but as a prince with subjects. But you are known to be subject to others. *Hence, perhaps without injury to them, unless they furnished assent to us, you could not submit yourself to us in this matter, nor are you of such authority that you have the faculty of dispensing concerning these things.* Therefore, induced by these reasons, when requested we granted grace to the king, drawing a cause both from the Old and from the New Testament that, not only in the patrimony of the Church, over which we bear full power in temporal matters, but also in other regions, after consideration of certain causes, we incidentally exercise temporal jurisdiction—not because we wish to prejudice another's right, *or to usurp power not due to us, since we are not ignorant that Christ answered in the Gospel: "Render to Caesar the things that are Caesar's, and to God the things that are God's." For which reason, when asked to divide an inheritance between two, he said, "Who appointed me judge over you?"*—but because, as is contained in Deuteronomy: "If you perceive that a judgment with you is difficult and ambiguous, between blood and blood, cause and cause, leprosy and *non*-leprosy, and you see *words* of judgment varying within your gates: *arise and ascend to the place which the Lord your God shall choose*; you shall come to the priests of the Levitical stock and to the judge who shall be at that time, *and you shall inquire of them*, who shall indicate to you the truth of the judgment; and you shall do whatsoever those who preside over the place which the Lord has chosen shall say, and you shall follow their sentence *and*

shall not turn aside to the right hand or to the left. But he who acts proudly, being unwilling to obey the command of the priest who at that time ministers to the Lord your God, shall die by the decree of the judge, *and you shall remove the evil from Israel*." Indeed, since Deuteronomy is interpreted as the second law, by the force of the word it is proved [*in this*] that what is decreed there ought to be observed in the New Testament. For the place which the Lord chose is recognized to be the Apostolic See, *in such a way that the Lord founded it upon himself* [*as*] *the cornerstone*. For when Peter, fleeing the city, had gone out, the Lord, wishing to recall him to the place which he had chosen, when asked by him, "Lord, where are you going?" answered, "I come to Rome to be crucified again"; understanding that this had been said for him, he immediately returned to the place itself. The priests of the Levitical stock are our brothers, who by Levitical right exist as our coadjutors in the execution of the priestly office. But the priest or judge over them is he to whom the Lord says in Peter: "Whatsoever you shall bind upon earth shall be bound also in heaven, *and whatsoever you shall loose upon earth shall be loosed also in heaven*." He is the vicar of the one who is a priest forever according to the order of Melchizedek, appointed by God judge of the living and the dead. Indeed, he distinguishes three judgments: the first between blood and blood, by which the criminal and the civil are understood; the last between leprosy and leprosy, by which the ecclesiastical and the criminal are denoted; the middle between cause and cause, which is referred to both, ecclesiastical as well as civil. In these, when something is difficult or ambiguous, recourse is to be had to the judgment of the Apostolic See; he who proudly disdains to observe its sentence is commanded to die, *and the evil to be removed from Israel*, that is, through a sentence of excommunication to be separated, as if dead, from the communion of the faithful. Paul also, that he might expound the plenitude of power, says in writing to the Corinthians: "Do you not know that you shall judge angels? How much more secular matters?" *Moreover, the office of secular power is sometimes accustomed to execute its function in itself in some matters, but sometimes in others through other persons*. Although, therefore, we considered that a dispensation should be made with the sons of the often-mentioned king *of the French*, concerning whom it is doubted whether they were legitimate from the beginning, nevertheless, because both the Mosaic and the canonical law detest offspring received from adultery—the Lord testifying that mamzers and spurious persons shall not enter the Church down to the tenth generation, while the canon forbids such persons to be promoted to sacred orders, and secular laws also not only repel them from the paternal succession but even deny them maintenance—we did not consider that assent should be given to your petition, *until, if it can be done, both a lighter fault and a freer jurisdiction are shown, although we embrace your person with the arms of special affection and wish to exhibit special grace to you in those things in which we can do so with God and with honor*.

Chapter XIV

Latin source headnote: If a married man, while the first wife is living, contracts with a second woman in the face of the Church while she is ignorant of this, their offspring will be legitimate.

The same, to H. and R., Canons of Benevento.

From the tenor of your letters it became known to us that, when the widow G. sought to have the inheritance of R., her late husband, restored to herself and her ward son *by Landulf of Granno and his nephews, together with the fruits received from it, in your presence, you who by our delegation were taking cognizance of the same case*, the adverse party was endeavoring to exclude her petition on the ground that it asserted that the *same* R., husband of the widow herself, had been begotten of adultery, *proposing that the father of the said Robert, while his lawful wife was living, brought in over her a certain other*

woman named Marucia, from whom he begot the aforesaid Robert, husband of the widow herself. But on the contrary the widow's party responded that, since the aforesaid Marucia, not knowing that the father of the said Robert had another wife, had contracted with him in the face of the Church, the son whom he received from her ought to be held legitimate, since those who are not born of a knowing adulteress ought not to be reputed illegitimate. And when litigation concerning this had continued for a rather long time in your presence, and the opinions of certain prudent men whose counsel you sought disagreed with one another in this matter, you considered that the Apostolic See should be consulted. Therefore we, having understood these and the other things which you intimated to us through your letters, after diligent discussion with our brothers, understanding that the father of the aforesaid R. married his mother in the face of the Church while she was *entirely* ignorant that he had matrimonially joined another woman to himself, and that while she was considered his lawful wife he received the said R. from her, incline rather in favor of the offspring, reputing the aforementioned R. legitimate *with respect to this. Therefore, by apostolic writings we command your discretion that* [*also*] *you repute him legitimate, being about to proceed in other matters according to the tenor of our letters, with reason going before.* [*Given at Rome at Saint Peter's, on the Ides of October,* 1205.]

Chapter XV

Latin source headnote: The offspring of infidels who are afterward converted is legitimate, even if the parents are in a degree prohibited by canon law.

The same, to the Bishop of Tiberias.

We rejoice—(And below: [*Compare below* 8, *On the Separation of Spouses, IV.* 19.]) Moreover, offspring born of the unions of infidels who contracted with marital affection in the second, third, or a further degree according to their opinion, after the reception of the faith we wish, at the urging of public utility, to be reputed legitimate. [*But those who, etc. Compare chapter* 8, *On the Separation of Spouses, IV.* 19.]

Title XVIII: Who Can Accuse a Marriage or Testify against It

Chapter I

Latin source headnote: When the bond of marriage is at issue, while the defendant is contumaciously absent, witnesses concerning an impediment to the marriage can be received, provided that they are lawful; and sentence is rendered according to their statements.

Alexander III, to the Bishop of Paris.

It was reported *to us on your behalf* that, when the father of a certain girl had given her in marriage to a certain citizen of Paris, the husband, after some years during which he remained with his wife, departed from the city through fear of death on account of the homicide which he committed. But now it is said *and seems capable of being lawfully* proved that the father of the *aforesaid* girl *held the young man for baptism and, what is more,* raised him from the sacred font; but although sought by your letters, he has not yet been able to be found, even though five years have passed. Moreover, *because concerning this your fraternity considered that we should be consulted,* we respond to your consultation in this manner: if the *young man and the girl were* [*together*] *for some years without question, those who now accuse the aforesaid marriage do not seem to be free from suspicion. Moreover, if* what is asserted is manifest, or lawful accusers and witnesses appear *superior to every exception,* after the young man has been sought with every

diligence, even if he cannot be found, you will be able to receive witnesses and terminate the judgment by a canonical end. *Yet you are to proceed in such a way that you do not seem in any way to prefer any affection or temporal advantage to justice. Indeed, those with whose knowledge and silence the marriage was contracted are not thereafter to be heard against it.*

Chapter II

Latin source headnote: Accusation and testimony in a matrimonial case ought to be made personally and not through letters.

Clement III.

It was asked of us *on behalf of your church* whether persons who utter nothing in their own voice concerning an accusation of marriage ought to be admitted through the writing of a small document alone. To this we respond that in such matters the writing is of no moment for rendering sentence, except as to presumption, unless other lawful supports concur. *Moreover, because this also was added to the consultation, we respond accordingly that those who were present at the betrothals and, when questioned, kept silent are not afterward to be received if they wish to confess anything against the marriage, unless they wish to say something about those things which in truth they learned afterward, concerning which it is established that at the time of the interrogation made they knew nothing. In what manner an oath is to be received from those who accuse a marriage or make some protest, and after how many years certain persons are to be heard in an accusation of marriage, we did not consider should be annexed to the present letters, both because the form of this oath appears diligently expressed in nearly all the canons, and because, on account of the variety of cases and the diversities of persons, a fixed limit concerning a span of years cannot be prescribed for these matters.* [*Given at the Lateran.*]

Chapter III

Latin source headnote: In a matrimonial case, blood relatives and parents can testify concerning consanguinity and the contract.

Pope Clement III, to the Bishop of Florence.

It seems to us *that the second woman whom he married contrary to the prohibition of the Church is not his wife, even if he had not betrothed the first. For the authority of both divine and human law proclaims that what has been done contrary to the interdict and order of the Church is not to be held ratified, as being disordered. Therefore, because the woman whom he irregularly brought in over the first is not his wife, since the prohibition resists, he is to be compelled to receive the woman to whom he swore and whom he betrothed, and from whom he begot offspring, so that the sanctity of the oath is not held in contempt, the faith mutually promised is preserved, the offspring is nurtured and educated in the worship of God, and others are not thereby able to take occasion for perjuring themselves and deceiving others. But* that parents, brothers, and blood relatives of both sexes are admitted in testimony concerning their own people for joining or dissolving a marriage is approved by both ancient custom and the laws, *and is likewise approved by both divine and human laws*. For this reason especially parents *are received*, and, if the parents are lacking, the nearer relatives are admitted, because each person endeavors to know his genealogy both from witnesses and documents and also from the recital of his elders. *Therefore, because they know better than others, they are especially admitted. They are likewise received in testimony for the purpose of joining a marriage.* For who ought to be received more fittingly than those who know better, and whose interest it is, in such a way that, if they have not been present and have not furnished consent, according to the laws no marriage is made? But what is

read—"a father is not to be received in the case of a son, nor a son in the case of a father"—is true in criminal cases and contracts; but for joining and disjoining marriage, by the prerogative of the marriage itself and because it is a favorable matter, they are fittingly admitted.

Chapter IV

Latin source headnote: A woman betrothed unwillingly, but afterward known voluntarily, is not heard against the marriage.

The same.

Moreover, you added that someone contracted with a certain girl not yet marriageable, who, finally reaching the bounds of age and being known by him several times, *after four or five years had elapsed from the aforesaid age*, protested against the marriage, asserting that from the beginning she had always dissented *from him*, and she proves what *she says* through witnesses illustrious in reputation and conduct. Therefore, in this case we judge that she ought not to be heard against the marriage, since, reaching the lawful year before she was known, she did not protest when she could have done so. For just as before lawful consent, which is expected in the twelfth year *according to canon law*, she was able to dissent, so, after at a lawful time she consented even once to carnal union, it is not doubted that by ratification she imposed silence upon herself concerning this. [*Again a certain man, etc. Compare chapter* 6, *Who Are Clerics or Vowed Persons, IV.* 6.]

Chapter V

Latin source headnote: One who accuses a marriage for gain is repelled.

Innocent III, to the Archbishop, the Provost, and the Prior of Saint Mary of the Albanians at Genoa.

At the representation of M. of Canula, *a citizen of Genoa*, it was declared to our apostolate that, when *he* had lawfully married N., S., the mother *of the woman* herself, endeavored to accuse the marriage in order to extort money from him. And although wicked works cannot answer her understanding, nevertheless *she* wishes to have money so that she may desist [*henceforth*] from accusation *of the same marriage*. Therefore, since indulgence is not to be granted to the malice of men, by apostolic writings we command *your discretion* that, if it is so, repelling the *woman herself* from accusation of the *same* marriage, you impose silence upon her concerning this. [*You, brother, etc. Given at the Lateran, on the seventeenth day before the Kalends of July,* 1204.]

Chapter VI

Latin source headnote: One who kept silent at the time of the proclamation is repelled from accusation of a marriage, unless he was reasonably ignorant of the proclamation, or swears that he learned the matter anew and that he does not object to it maliciously.

The same.

When in your diocese—(And below: [*Compare chapter* 30, *On Tithes, III.* 30.]) But if after a marriage has been contracted some accuser appears, although he did not come forth publicly when the banns were proclaimed in the churches according to custom, it can deservedly be asked whether the voice of his accusation ought to be admitted. Concerning this we considered that a distinction should be

made as follows: if, at the time of the aforesaid proclamation, the one who attacks those now joined was outside the diocese, or otherwise the proclamation could not come to his knowledge—as, for example, if, laboring under the heat of excessive infirmity, he suffered exile from a sound mind, or *was* constituted in years so tender that his age was not able to suffice for comprehension of such things, or was impeded by another lawful cause—his accusation ought to be heard. Otherwise, since it is reasonably presumed that, while present in that diocese, he was by no means ignorant of the proclamation publicly made, he is without doubt to be repelled as suspect, unless he has affirmed by his own oath that he afterward learned the things which he objects and that he does not proceed to this from malice; because then, even if he learned from those who kept silent at the time of the proclamation, the approach to accusing ought not to be closed to him, since, even if the fault contracted from such silence excluded them from an attack of this kind, nevertheless this man could not be removed, since he is not culpable. [*But whether, etc. Compare chapter* 44, *On Witnesses, II.* 22. *Given at the Lateran, on the fourth day before the Kalends of November, in the fifteenth year of our pontificate,* 1212.]

Title XIX: On the Separation of Spouses

Chapter I

Latin source headnote: Necessary homicide does not deprive one of the hope of marriage, but a plot against the death of a spouse does.

From the council at Worms.

If any woman has taken counsel with other [*persons*] for the death of her husband, and the *man* himself, in defending himself, kills one of them, *and to prove this* [*you are able*], the *man himself can dismiss that wife and*, after the death of the wife, if he wishes, marry another. But let the woman who laid the plot remain subject to penance without hope of marriage.

Chapter II

Latin source headnote: Spouses are not separated on account of the crime of one of them, unless they fornicate spiritually; and even then the marriage endures, even when they have been separated.

Alexander III.

Your fraternity asked of us whether a woman ought to be separated from her husband for robbery or any other crime and marry another; and concerning the man you proposed a question in like manner, whether for any disgraceful act he can be divided from his spouse and lawfully join another to himself in marriage. Therefore we respond in this manner: a woman ought not to be separated from him for theft or another crime of her husband, unless *he endeavors to draw her into his evil deeds and* wishes to corrupt the religion of her faith, *nor is she for any reason to be joined to another*. But if he has drawn his spouse into the evil deed of unbelief, the *woman* will be able *to depart* from the husband *and* to be separated, in such a way, however, that it will not be lawful for her to marry another, because, although they are separated, they will nevertheless always be spouses. In the case of husbands also, let the form of the present sentence be observed.

Chapter III

Latin source headnote: A husband cannot dismiss his wife without a judgment of the Church, even on account of a notorious impediment of kinship. If report relates an impediment to a marriage, even

when no one opposes it, the bishop can inquire into it by his office. But if the impediment is notorious, the bishop can separate the marriage by his office.

The same, to the Bishops of Amiens.

Moreover, concerning the Count of Ponthieu, who dismissed *the daughter* of B. *of Saint-Valery*, his wife, without a judgment of the Church *for the reason* that he proposes that she was a blood relative of his deceased wife, let your prudence know *this*: even if the kinship were public and notorious, he could not be separated from her without a judgment of the Church; wherefore you are strictly to compel him to receive her who seeks restoration of him. If he is unwilling to receive her, bind him and the woman brought in over her with the bond of excommunication. *But if any persons appear who lawfully wish and are able to attack the marriage itself, hear the case and decide it by the due end.* Moreover, concerning H., who married *the daughter of Adelm*, his blood relative, [*as*] wife, *if this is public and manifest and no one appears who wishes to attack the marriage, we respond to you* that, when accusers do not appear and the kinship is manifest or public—which is not credible unless they were *first cousins* in the first or second degree—it pertains to your office to dissolve, with gravity applied, those marriages which are known to have been unlawfully contracted. [*To these things, etc. Compare chapter* 15, *On Tithes, III.* 30.]

Chapter IV

Latin source headnote: A wife seeking restoration of her husband is repelled if she has notoriously fornicated and the husband has remained continent.

The same.

You signified *to us* that a certain *knight in your province*, having dismissed his wife without a judgment [*and authority*] of the Church because it had been suggested to him that she had committed incest with a certain blood relative of his, was on this account bound with the bond of excommunication. But the *woman herself* did not remain continent, but received offspring from another man; nevertheless she seeks to be restored to her husband, asserting that she [*had been*] unjustly dismissed by him and that the same *man* had given her material for committing adultery. *Hence, because you consulted us whether the woman herself ought to be restored to* [*her*] *husband, and the husband compelled to receive her*, we respond to your consultation in this manner: if it is notorious that the woman herself committed adultery, the aforesaid husband ought not to be compelled to receive her, unless it were established that he had committed adultery with another woman.

Chapter V

Latin source headnote: A marriage is separated on account of the adultery of the woman, and, if the man afterward fornicates, it is restored. And it is a good case and very capable of being cited.

The same.

We received from your letters that *the bearer of the present letters*, named V., *formerly of your diocese*, married a certain woman, *namely Lucia, as* wife; they, *at the instigation of a malignant spirit*, were in concord for only a short time. For the same V. proposed that he had married her through violence inflicted upon him, with fear also intervening. *But you, together with your chapter, when you often endeavored to restore peace between them by both threats and admonitions, compelled them, after they had been rashly separated, likewise to be reconciled:* finally the husband judicially accused his wife concerning the

crime of fornication, and she, being led by what spirit is unknown, began publicly to confess that, because her husband refused to provide for her in *things due and* necessary, she was compelled to incur the aforesaid crime. And when she had been more diligently admonished by you not to propose so shameful a thing against herself at the suggestion of anyone *or upon iniquitous counsel*, she asserted it more manifestly. Indeed, when, after summoning your chapter *and other discreet men*, on their counsel you *firmly* enjoined upon each of them that continence was to be observed privately, in such a way that they should live chastely while separated from one another, *and from the report of certain persons you perceived that* the aforementioned V. *intended to marry another woman, although you diligently admonished him not to attempt this in any manner, nevertheless outside the city* he rashly celebrated betrothals and nuptials with another woman in secret. But when you labored to investigate the deed, *so that you might proceed according to it*, the above-mentioned V., explaining and expounding the course of the matter *as it had been done*, is said to have appealed to our hearing. Hence, *by apostolic writings*, we command your fraternity that, if the matter so proceeded, *with appeal removed, through a sentence of excommunication* you compel the aforesaid man to return to his lawful wife, *and, after penance has been enjoined upon him for the adultery committed with the second woman, you cause the first to be treated by him with marital affection.* [*The chaplain, etc. Compare chapter* 1, *On Second Marriages, IV.* 21. *Given at the Lateran.*]

Chapter VI

Latin source headnote: If a wife departs on her own authority from a husband who has lapsed into heresy, she is compelled to return to him when he returns; otherwise, if she had been separated from him by a judgment of the Church.

Urban III, to the Bishop of Florence.

Concerning the woman *indeed* who, when her husband lapsed into heresy, avoided his companionship without a judgment of the Church, *whether, when he returns to Catholic unity, she is to be compelled to restore the marriage*, it seems to us that the woman—especially if she departed with the intention that he who lapsed into heresy, affected alike by weariness and confusion, might convert himself from his error—is to be restored to him when he has returned, and, even if she is unwilling to return, is to be compelled. But if by a judgment of the Church she withdrew from him *without hope of restoring the marriage*, we say that *she* is in no way to be compelled to receive him. [*But concerning the wife, etc. Compare chapter* 7, *On Burial, III.* 28.]

Chapter VII

Latin source headnote: The conjugal bond is not dissolved when one of two faithful spouses lapses into heresy. But if one of two infidel spouses is converted to the faith and the other is unwilling to cohabit with that spouse, or not without blasphemy, or without mortal sin, the marriage is dissolved, and the convert will be able to contract.

Innocent III, to the Bishop of Ferrara.

The *more* we know you to be skilled in canon law, *the more we commend your fraternity in the Lord because in doubtful points of questions you have recourse to the Apostolic See, which by the Lord's disposition is the mother and teacher of all the faithful, so that the opinion which you once held in them while you taught others skill in canon law may either be corrected by the Apostolic See or approved*. Indeed, your fraternity *through its letters* intimated *to us* that, when one of the spouses passes into heresy, the one who is left desires to fly to

second vows *and to procreate children*; through your letters you considered that we should be consulted whether this can be done *by law*. Therefore, responding to your consultation *on the common counsel of our brothers*, we distinguish—although a certain predecessor of ours seems to have thought otherwise—whether one of two infidels is converted to the Catholic faith, or one of two faithful persons lapses into heresy or falls into the error of paganism. For if one of the infidel spouses is converted to the Catholic faith, while the other is either in no way willing to cohabit with that spouse, or is willing to do so *at least* not without blasphemy of the divine name, or in order to draw that spouse into mortal sin, the one who is left will pass to second vows if that person wishes. And in this case we understand what the Apostle says: "If the infidel departs, let that person depart. For a brother or sister is not subject to servitude in matters of this kind," and also the canon in which it is said *that* "an insult to the Creator dissolves the law of marriage with respect to the one who is left." But if one of two faithful spouses either lapses into heresy or passes into the error of paganism, we do not believe that in this case the one who is left can, while the other is living, fly to second nuptials, although in this case a greater insult to the Creator appears. For although a *true* marriage exists between infidels, it is nevertheless not ratified. But between the faithful it exists both *true* and ratified, because the sacrament of faith, which was once admitted, is never lost; but it makes the sacrament of marriage ratified, so that the sacrament itself endures between the spouses while it endures. Nor does it stand in the way that perhaps it is objected by certain persons that the faithful person who is left ought not without fault to be deprived of that person's right, since this happens in many cases, as if one of the spouses is castrated. By this response, *however*, the malice of certain persons is forestalled who, out of hatred for their spouses, or whenever they displeased one another, if they could dismiss them in such a case, would feign heresy so that, when their spouses married, they might recoil from the marriage itself. Through this same response is resolved that question by which it is asked whether the one who remained in the faith is compelled to return to the one who returns [*either*] from heresy or from infidelity. [*Given at the Lateran, on the Kalends of May,* 1199.]

Chapter VIII

Latin source headnote: Pagans joined in a degree prohibited only by canon law are not separated when converted to the faith. This first. If a pagan previously has several wives, after receiving the faith he will adhere to the first. This second. And if, after repudiating a wife, he contracted with a second, even after baptism he will dismiss the second and adhere to the repudiated first wife, even if the repudiated woman had contracted with another; otherwise if she had fornicated. This third.

The same, to the Bishops of Tiberias.

We rejoice in the Lord *and in the power of his might, and we render abundant acts of thanksgiving to the Father of lights, from whom is every best thing given and every perfect gift, because, as you intimated to us by your letters, in these last days he who does not wish the death of a sinner but that he be converted and live has inspired the hearts of many pagans to come to the Christian faith.* You sought to be instructed by an apostolic writing whether pagans who take as wives women joined to them in the second or third or a further degree, being so joined, ought after their conversion to remain together or to be separated from one another. Concerning this we respond to *your fraternity* in this manner: since the sacrament of marriage exists among both the faithful and infidels, as the Apostle shows, saying, "If any brother has an unbelieving wife, and she consents to dwell with him, let him not dismiss her," and in the aforesaid degrees marriage has been lawfully contracted by pagans with respect to themselves, who are not bound by

canonical constitutions—"For what is it to us," according to the same Apostle, "to judge concerning those things which are outside?"—especially in favor of the Christian religion and faith, from the reception of which men can easily be recalled by wives who fear that they will be deserted, faithful persons of this kind who were matrimonially joined can freely and lawfully remain joined, since marriages are not dissolved through the sacrament of baptism, but crimes are remitted. But because pagans divide conjugal affection among several women at the same time, it is not without reason doubted whether after conversion they may retain all of them or which one of all. *But because both the patriarchs and other just men before the law and likewise after the law are read to have had many wives at the same time, and no contrary precept appears in the Gospel or the law, nor are pagans subject to canonical institutes discovered afterward, as was premised, it seems that even now according to their rite they lawfully contract with different women, whose lawful unions the water of sacred baptism does not dissolve; and thus, after the example of the patriarchs, pagans converted to the faith of Christ will rejoice in a plurality of marriages.* But this seems discordant and hostile to the Christian faith, since from the beginning one rib was transformed into one woman, and divine scripture testifies that for this reason a man shall leave father and mother and shall adhere to his wife, and the two shall be in one flesh; it did not say "three or more," but "two," nor did it say "he shall adhere to wives," but "to his wife." *Hence Lamech, who is read to have had several wives at the same time, is reproved in the scriptures because he first introduced the reprobate form of bigamy. Although you did not ask concerning these things, nevertheless, wishing to render both you and others more certain concerning them as well, and that truth may prevail over falsehood, without any doubt we declare that* it was never lawful for anyone to have several wives at the same time, unless it was granted to him by divine revelation, which is sometimes reckoned custom and at other times even divine right; through this, just as Jacob is excused from falsehood, the Israelites from theft, and Samson from homicide, so also the patriarchs and other just men who are read to have had several wives at once are excused from adultery. Indeed, this truthful sentence is proved also by the testimony of Truth, who testifies in the Gospel: "Whoever shall dismiss his wife, *except* on account of fornication, and shall marry another, commits adultery." If, therefore, after the wife has been dismissed, another cannot lawfully *also* be married, all the more while she is retained; through this it plainly appears that plurality concerning marriage is to be reproved in both sexes, since they are not judged by unequal standards. *Moreover, etc.* (*Compare chapter* 15, *Which Children Are Legitimate, IV.* 17.) But he who according to his rite repudiated his lawful wife, since Truth in the Gospel has reproved such repudiation, will never lawfully be able, while she lives, to have another, even after being converted to the faith of Christ, unless after his conversion she refuses to cohabit with him, or, even if she consents, nevertheless not without insult to the Creator, or in order to draw him into mortal sin. In this case, restitution would be denied to the one seeking restoration, although an unjust spoliation were established, because according to the Apostle a brother or sister is not subject to servitude in matters of this kind. But if she, converted also, follows him after he has been converted to the faith, before he marries a lawful wife on account of the aforesaid causes, he will be compelled to receive her. Moreover, although according to the truth of the Gospel he who marries a dismissed woman commits adultery, nevertheless the man who dismissed her will not be able to object to the dismissed woman the fornication arising from the fact that she married another after the repudiation, unless she otherwise fornicated.

Chapter IX

Latin source headnote: It is not lawful to take the widow of a brother as wife, and if married in fact she is to be separated, unless the Church dispenses otherwise.

The same, to the Bishop of Livonia and the brothers who are with him.

God, who his Church—(And below: [*Compare chapter* 11, *On Life and Honesty, III.* 1.]) But because *in contracting marriages* the rite among those of the Church of Livonia newly converted to the Catholic faith is different from ours, *since they do not attend to the canonical distinction in consanguinity or affinity, and have been accustomed indiscriminately to join the widows of their brothers to themselves; lest on account of this they be drawn back from their good purpose—since certain of them were unwilling to believe unless you permitted them to retain their brothers' widows, nor were you willing to receive them for baptism unless they dismissed such women* —on account of the *newness and* weakness of that people, we concede that they may enjoy marriages contracted with their brothers' widows, if nevertheless, when the brothers died without offspring, they contracted with such women so that they might raise up the seed of the deceased according to the Mosaic law; prohibiting them from joining such women to themselves henceforth, after they have come to the faith. [*To these things,*] *adhering to the footsteps of blessed Pope Gregory, our predecessor of holy memory, lest the people of Livonia, through fear of more austere requirements, withdraw from the good which it began, by apostolic authority we dispense with them so that they may contract marriage in the fourth and further generation until they are more fully made firm in the faith; conceding this to them not with the intention that, after they have been made firm in the faith with a stable root, they may be joined to such persons; for according to the word of the Apostle, saying, "I gave you milk as drink, not meat," we conceded that these things are to be held for the present only, not for future times, lest, which may it not be, the good which has been planted with a still-weak root be burned up, but rather that it may be strengthened and faithfully preserved unto perfection. But since the sacrament of marriage exists among the faithful and infidels, as the Apostle declares: "If any brother," he says, "has an unbelieving wife, and she consents to dwell with him, let him not dismiss her"; and since by pagans, who are not bound by canonical constitutions—(for what is it to us, according to the same Apostle, to judge concerning those who are outside?)—marriage in the second and third degree is lawfully contracted with respect to themselves: in favor of the Christian religion and faith, from the reception of which men can easily be recalled by wives who fear that they will be deserted, faithful persons who, in this degree while in infidelity, were matrimonially joined to one another can freely and easily remain joined, since marriages are not dissolved through the sacrament of baptism but crimes are remitted. Moreover, etc.* [*Compare chapter* 7, *On Penance, V.* 38. *Given on the thirteenth day before the Kalends of May, in the fourth year,* 1201.]

Title XX: On Donations between Husband and Wife, and on Dowry to Be Restored after Separation

Chapter I

Latin source headnote: When a marriage has been lawfully separated, the dowry is to be restored.

From the council held at Worms.

But when women have been separated from their own husbands for some lawful cause, we command that their entire dowry be returned to them, *which they received on the wedding day; and after the completion of a year let them marry another husband, if they wish; and likewise let a husband marry another wife*.

Chapter II

Latin source headnote: When the marriage has been dissolved, the husband is compelled to restore the dowry and to divide the goods which came to them in common.

Urban III, to the Dean, Cantor, and Chapter of Lisieux.

The woman P. signified *to us* that H., whom she held in the place of a husband, after a separation had solemnly been pronounced between them, unlawfully detains her dowry and refuses to return it; he also endeavors to claim for himself, with her wholly excluded, the possessions which came to them in common by the title of any contract while they lived together. Therefore, by apostolic writings, we command *your discretion* that, if it is so and there is nothing else that stands in the way, by ecclesiastical compulsion you compel him to restitution of the dowry and *to* division of those things which they formerly had in common.

Chapter III

Latin source headnote: A delegate to a matrimonial case, if he renders a sentence of separation, ought to pronounce that the dowry is to be restored. And it is a case very capable of being cited.

Clement III.

We wonder *greatly* at your prudence, because, when we had committed to you for *canonical* termination the matrimonial case which was being conducted between H., *a citizen of Pisa,* and the *woman* M., and you, finding consanguinity between them *in the sixth or seventh degree,* had rendered a sentence of separation, you deferred making any determination concerning the dowry which the woman was seeking back from the man. Therefore, because *according to the laws* you, who took principal cognizance of the marriage, were also able to take accessory cognizance of and judicially determine the dowry, which is an incidental cause, by apostolic writings we command *your discretion* that, after a warning has been premised, you compel the aforesaid H. not to delay restoring to the aforesaid M. *her* entire dowry, as shall be canonical.

Chapter IV

Latin source headnote: A woman separated from her husband on account of adultery loses her dowry.

Clement III.

It very often *happens, as you propose, that in your parish women withdraw from their husbands on account of fornication and are known to remain so until the death of the husbands themselves; but when those men are dead and the women seek back their dowry together with their dower from the blood relatives to whom the inheritances of those men come, they deny them a hearing and are unwilling to restore what they demand, for this reason: because they are thought to have made themselves unworthy by the very fact that they considered that they should withdraw from their husbands on account of fornication.* [*Moreover, etc. Compare chapter* 2, *On Delays, II.* 8.] *Therefore, because you desire to be instructed by an apostolic response about what is to be done in each case,*] *we therefore respond in this matter that,* if a woman, on account of *her own* fornication, withdraws from *her* husband by a judgment of the Church or by her own will, and afterward is not reconciled to him, *when he is dead* she will not be able to seek back her dowry or *her* dower. [*In the second case, etc.* (*Compare chapter* 2, *On Delays, II.* 8.) *Given at the Lateran, in the third year,* 1190.]

Chapter V

Latin source headnote: A woman is compelled by the office of the judge to relinquish things given to her by a man on account of nuptials for the preservation of an unlawful marriage, if such a donation presents an impediment to the dissolution of such a marriage. This is what it says according to the understanding which pleases Panormitanus more.

Innocent III, to the Archbishop of Compostela and all the Bishops constituted in the Kingdom of León.

Although it is necessary [*that scandals come, nevertheless woe to that man through whom scandal comes. For how many disturbances and scandals have come upon the entire world in our days we experience today more in fact than we find written in a book. But it is necessary that scandals come, not only, namely, as something unavoidable, but also as something useful, since where the evil man fails, the good man makes progress, and gold is proved in the furnace. But among the other things by which the Christian people is scandalized today, foremost is the persecution of the pagans, which, with sins demanding it, has grown strong beyond measure both in the east and in the west; against this, in both places, they thought to find a remedy similar in a certain manner, but because they did not set God before their sight, what was found as a remedy was turned into danger. Indeed, in the east one woman was incestuously joined to two men, but in the west one man presumed to join two women to himself through incest. And in the incest committed in the east, not only the consent but also the authority of the clerics dwelling there intervened. But in the detestable union contracted in the west, although perhaps it was attempted not without the assent of certain ecclesiastical men, ecclesiastical authority nevertheless in no way intervened. But God, wishing to avenge the greater sin more quickly and to deter others from similar things, destroyed Conrad, the late marquis, who ... had previously adhered through incest to the Queen of Jerusalem, by the sword, and Henry, the late Count of Champagne, who succeeded him in a certain manner both in fault and in punishment, by a fall, but each by an unforeseen death. Yet he has not exercised his vengeance against the authors of this iniquity in the west. But the more long-sufferingly he bears them, perhaps the more severely he will avenge. Although the Apostolic See seemed to have dissembled what had been committed concerning this in the east on account of the malice of the time and the pressing persecution, nevertheless it employed the rigor of canonical compulsion to avenge what had been attempted in the west. For when it had come to the hearing of Pope Celestine, our predecessor of good memory, that the King of León had presumed incestuously to join to himself the daughter of our dearest son in Christ, the illustrious King of Portugal, he bound both the King of Portugal himself and those incestuously joined with a sentence of excommunication, and subjected the kingdoms of León and Portugal to a sentence of interdict, whence what had been unlawfully done was wholly revoked. But the said King of León, extending his hand to worse things, like the one of whom scripture says, "Woe to that man who draws sin after himself like a long garment, and the impious man, when he has come into the depth of vices, despises," shamelessly presumed, contrary to the interdict of the Church, to join to himself the daughter of our dearest son in Christ, the illustrious King of Castile—namely, his own niece. When this came to our knowledge, we considered that our beloved son Brother Rainerius, a man equally worthy of reverence for knowledge and religion, acceptable to God and men by reason of his knowledge and honesty, should be sent into Spain, so that according to the prophetic word he might dissolve the bonds of impiety and loose the bundles that oppress. By the grace of God he shook his hands free from every gift, so that what is read might truly be referred to him: "There was no one who enriched Abraham." Therefore, when he arrived in Spain, he diligently admonished the said King of León once and a second time on our behalf that he should recoil from so detestable and unspeakable a union, all the bonds which had been contracted for consummating that union having been dissolved. But when he had made no progress at all with him by his admonitions, he assigned him a fixed day and place; and when he had waited for him even beyond the term, he promulgated against him, who contumaciously absented himself, a sentence*

of excommunication according to the form of our mandate, and enclosed the Kingdom of León under a general interdict. But he proceeded in nothing against the aforementioned King of Castile or his land, since the same king submitted himself to his mandates and assertively proposed that he would receive his daughter if she were returned to him. Whether he did this from his heart is known more fully by him who is the searcher of hearts and knower of secrets. Recently, however, our venerable brothers the Archbishop of Toledo and the Bishop of Palencia on behalf of the King of Castile himself, and our venerable brother the Bishop of Zamora on behalf of the King of León, coming to the Apostolic See, requested that we ought to dispense with the same King of León and the daughter of the said King of Castile concerning so incestuous a union. On account of this, unless that special grace which we have toward the devotion of the said King of Castile had tempered the movement of our mind, we would have taken care to exercise ecclesiastical severity against them in such a way that thereafter, in our times, no persons would bring to us petitions so often repudiated and condemned; since they themselves also knew that this had been requested more often from the same predecessor of ours, and had been prohibited by him, not granted. But finally the aforementioned archbishop and bishops, understanding that not only could they not obtain indulgence from us concerning this, but could scarcely obtain a hearing from us, at last requested from us that the interdict pronounced upon the land of the King of León be remitted, asserting that from it a threefold danger threatened the whole kingdom from heretics, Saracens, and even Christians. From heretics: because, since through the interdict itself the mouths of the shepherds were closed in those regions, the faithful could not be instructed by them against the heretics and be informed in any manner to resist them; whence, both from this and because the King of León, asserting himself to be aggrieved by the Church, scarcely resisted them, the heretics grew strong against the faithful and various heresies sprouted in the kingdom itself. From the Saracens: because, since through the exhortations and remissions of the Church the people of the Spains had been accustomed to be induced to the conquest of the pagans, when the office of preachers ceased, the devotion of the people also grew cold; because, since the people saw themselves with their prince subjected to the same penalty with respect to the interdict, perhaps they did not believe themselves immune from the fault to which they had consented even by remaining silent, on account of which they burned less ardently for the defeat of the Saracens, lest they die in sin. From the Catholics: because, since clerics could not minister spiritual things to laymen, the laymen withdrew temporal things from the clerics, withholding offerings, first fruits, and tithes; whence, since the clerics in those regions had been accustomed for the greater part to be sustained from these things, when they were withdrawn, they were compelled not only to beg but to dig and to serve Jews, to the reproach of the Church and of the whole of Christianity. But it seemed difficult to assent to their petition and canonically to relax without fitting satisfaction a sentence rendered from intention, order, and cause. From intention indeed: because, as God bears witness to our conscience, we proceeded to this for no reason except the consideration of justice and honesty, since, on the contrary, a presumption could rather have arisen against us if we had considered that so detestable a deed should be tolerated with patience. From order: because the said Brother R., after lawful admonitions and delays, finally struck the contumacious man with ecclesiastical compulsion. From cause: by example, namely divine and human. Divine: because, when David sinned in numbering the people, the Lord poured out upon the people the vessels of his wrath; whence the same David is read to have said, confessing the sin to the Lord: "I am he who sinned; I am he who acted iniquitously. These, who are sheep, what had they done? Remove, I beseech you, your face, O Lord, from your people." Human: since our already-mentioned predecessor (so that examples may not be sought far away) took care to promulgate the aforesaid sentences against the aforesaid kings of Portugal and León and their kingdoms. Moreover, it would be a matter of evil example, because if perhaps it happened that we promulgated a similar sentence against other kingdoms, a similar grace would be sought from us; if perhaps we denied it, there would seem to be acceptance of persons with us. From this also a suspicion concerning us could arise among certain persons, some perhaps presuming that we were moved to this by a hidden cause. Although, therefore, for the aforesaid causes the

said petition did not seem admissible, nevertheless, because where there is a multitude in a case something is to be taken away from severity so that sincere charity may come to the aid of greater evils to be healed, in that matter, at the petition of the aforesaid archbishop and bishops, on the common counsel of our brothers, we considered that grace should be granted concerning the matter from which the impediments expressed above seemed to proceed. Therefore we relaxed the interdict not wholly, but only in one part, and not perpetually, but for a time—namely for as long as it shall please us and we shall see it to be expedient—so that meanwhile we may prove the spirits, whether they are of God, and whether (*as the same archbishop and bishops assert*) *the utility hoped for from it would follow; namely, in such a way that divine offices are celebrated in the kingdom itself, but the bodies of the dead are not delivered to ecclesiastical burial. In this, however, we grant special grace to the clerics, namely that they be buried in an ecclesiastical cemetery with the accustomed solemnity ceasing. Although this could perhaps seem discordant to certain persons, that when the office has been restored ecclesiastical burial should be denied, because according to the canonical sanctions we ought to communicate when dead with the one with whom we communicated when living, nevertheless to those who understand rightly nothing incongruous occurs from this, since, according to the institutes of the Lateran Council, those who die from tournaments, even if through penance they are reconciled to the Church, are nevertheless deprived of Christian burial. But so that we may seem not to remit the penalty but rather to commute it, we took care to bind the said King of León, the aforementioned daughter of the King of Castile, and all their principal counselors and supporters with a sentence of excommunication, commanding that, to whatever city, town, or village they come, no one presume to celebrate divine offices there while they are present. But we shall command the said King of Castile and our dearest daughter in Christ, the queen his wife, to furnish sworn security that they will stand by our mandates, and either to express in the oath that they will devote effective labor to dissolving so unlawful a union, or we shall cause this to be commanded to them after the oath has been furnished; nor do we believe that concerning this they will show themselves contumacious in any manner, since in the hands of the aforesaid Brother R.* (*as appears from the letters of the same king*) *they had firmly promised that they would stand by the mandates of the Church, and had furnished sufficient cause for consummating a union of this kind. But if perchance* (*which we do not believe*) *they are unwilling to obey our mandates, we shall command them and their principal counselors and supporters to be excommunicated, and wherever they come we shall prohibit divine offices from being celebrated, so that in this way at least they may return to the mandate of the Church, according to what is read in the Psalmist: "Fill their faces with ignominy, and they shall seek your name, O Lord."*] But because certain castles which the *same* King of León is said to have delivered as dowry to the *said* daughter of the King of Castile, in such a way that if he left her on any occasion they would fall into her right, seem to present an impediment to dissolving a union of this kind, since the castles themselves were given not so much for a base cause as *rather* for no cause, seeing that no marriage exists between them and therefore neither a dowry nor a donation on account of nuptials, lest that fall to her advantage which ought rather to be turned to her punishment, we will that the castles themselves be restored and that the *girl herself* be constrained to this through a sentence of excommunication, *decreeing by apostolic authority that, if any offspring has been or shall be received from so incestuous and condemned a union, it is to be held wholly spurious and illegitimate, and according to lawful statutes is to succeed to the paternal goods on no occasion whatsoever. But if not even* [*thus*] *do the aforesaid King of León and daughter of the King of Castile hasten to depart from one another according to the apostolic mandate, we shall take care to exercise against them the gravest compulsion, which as a precaution we did not consider should be explained in the present letters.* [*Therefore to the fraternity, etc. Given at the Lateran, on the eighth day before the Kalends of June,* 1199.]

Chapter VI

Latin source headnote: A usufructuary who, without the consent of the owner, gives the thing itself to his wife on account of nuptials does not transfer to her more right than he himself had; the same concerning one who has a thing as an inheritance or a fief under a condition that takes it away.

The same, to the Archdeacon of Saint Andrews in Scotland.

Recently your discretion asked of us: if some land had been given to someone not as an inheritance or fief, but only *to him* to be possessed for as long as he lived, and he afterward granted a third part to his wife as dowry, whether, when he was dead, the wife ought to have and hold the aforesaid dowry for as long as she lived, since the Church is bound to protect the dowries of widows. You asked in addition *to be instructed by our letters*: if some land had been given to someone and to the heir whom he would beget from a lawful wife as an inheritance or fief, and afterward, after a certain part of it had been granted to his wife as dowry, he died without offspring, whether the *woman herself* could have the same dowry by law, *and whether the Church ought to stand for her in this case, or, when the man was dead, that land ought to return without burden into the goods of the grantor*. But we respond to your consultation in this manner: since as a rule no one can transfer to another more right than it is established that he has, a man to whom land is granted in the aforesaid manner cannot leave to his wife what it was not lawful for him to possess except for as long as he lived. Nor is it lawful for his wife to hold a part of that land as a donation on account of nuptials by the grant of the man, unless *perhaps* the one to whom the ownership of that land pertains wishes to consent to *that* donation. But what we say concerning the first consultation, we respond also concerning the second. For although the Church ought to show herself favorable in the cases of widows, ecclesiastical favor is nevertheless not to be granted to them contrary to justice. But we do not wish you to be ignorant of this: that according to the lawful sanctions the wife is said to give a dowry to the husband, but the husband to make to the wife a donation on account of nuptials.

Chapter VII

Latin source headnote: A husband proceeding for a dowry is not wholly excluded by the fact that he is tending toward poverty, nor is he absolutely compelled to give security beyond his own means; but the dowry is assigned to him under such security as he can furnish. And if through that security sufficient provision would not be made against consumption of the dowry, the dowry will be deposited with a merchant, so that from an honest profit the husband may sustain the burdens of marriage. This is what it says according to the understanding which Panormitanus holds by adhering to the words of the letter, and it is a noteworthy and everyday case.

The same, to the Archbishop and Archdeacon of Genoa.

Through your letters you intimated *to us* that, when by our authority you took care to sue Master R. concerning a certain sum of money *in Genoese currency* on behalf of the poor man H., *bearer of the present letters*, which the same H. was demanding from him as the dowry of his wife, the said R. opposed against him the exception that *namely* he had repelled his wife from himself and *that*, with the truth concerning this suppressed, he had obtained *our* letters; because, when a question concerning the same dowry had *already* on another occasion been moved before the consuls of your city, they pronounced, *according to the custom of the land*, that, since the same H. seemed to be tending toward poverty, that dowry should not be assigned to him unless he furnished suitable security that it would

not perish. Whence you, *after sharing the counsel of prudent men*, commanded him to give security for preserving the dowry and to receive his wife, *and that, until he could do this, the dowry itself should, if he wished, be deposited in the treasury of the Church of Genoa. Since he could not fulfill this, at his instance you took care to write these things back to us*. Therefore, since a small portion of the dowry can sufficiently be entrusted to him to whom the body of the wife was entrusted, by apostolic writings we command *your discretion* that you cause the dowry to be assigned to him under such security as he can furnish, or at least to be committed to some merchant, so that from a part of the honest profit the said man may be able to sustain the burdens of marriage, lest on the occasion of the detained dowry the wife dismissed by the husband, or the husband who dismissed the wife, incur the guilt of adultery. [*Given at Rome at Saint Peter's, on the eighth day before the Ides of March, in the ninth year of our pontificate,* 1206.]

Chapter VIII

Latin source headnote: This decretal sufficiently summarizes itself.

Gregory IX.

A donation which is said to have been made between spouses while the marriage endures, from which one becomes richer and the other poorer, has no firmness unless it is confirmed by the death of the donor; yet it wholly vanishes if it is revoked by him tacitly or expressly, or if the one who received what was donated first pays the debt of nature. Indeed, when the marriage has been dissolved, just as the dowry returns to the woman, so also the donation on account of nuptials returns to the man, unless otherwise obtains by custom or by an agreement concerning acquiring the dowry or the donation on account of nuptials, which agreement is equal when the contrary is introduced from each side.

Title XXI: On Second Marriages

Chapter I

Latin source headnote: Second nuptials are not blessed, and the one blessing them is to be punished.

Alexander III.

Moreover, do not in any way postpone sending to the Apostolic See, with the testimony of your letters and *with appeal ceasing*, the chaplain whom it shall be established *to you* to have celebrated a blessing with the second woman, suspended from office and benefice. [*Given at the Lateran.*]

Chapter II

Latin source headnote: One who doubts the death of a spouse ought not to contract unless first made certain; and, if that person has contracted, let that person render but not exact the debt. And if afterward that person knows that the first spouse is living, let that person dismiss the second. The Sicilian Abbot.

Lucius III, to all Christians placed in captivity among the Saracens.

Our Lord and Redeemer—(And below:) Indeed, concerning the marriages which certain among you contracted when certainty of the death of the deceased spouse had not yet been obtained, by *apostolic*

authority we respond this to you: that no one *among you* henceforth presume to pass to second nuptials until it is established to that person *with firm certainty* that his or her spouse has departed from this life. But if any man or woman has not observed this hitherto and still thinks that he or she ought to doubt the death of the prior spouse, let that person not deny the debt to the one who married that person when it is sought, yet let that person know that it is in no way to be exacted by him or her. But if after this it is established that the prior spouse is alive, having left the adulterous *and unlawful* embraces, let that person return *without doubt* to the prior spouse.

Chapter III

Latin source headnote: If one of the spouses was blessed on another occasion, the spouses ought not to be blessed anew.

Urban III, to the Bishop of Vigevano.

But a man or woman passing to bigamy ought not to be blessed by a priest, because, since they were blessed on another occasion, their blessing ought not to be repeated.

Chapter IV

Latin source headnote: A woman marrying within the year of mourning does not incur infamy. This is what it says together with the following chapter. The Sicilian Abbot.

The same, to the Bishop of Exeter.

But concerning that question by which it was asked whether *namely* a woman can marry without infamy within the time of mourning defined according to the laws, we respond to *your solicitude* that, since the Apostle says, "A woman, when her husband is dead, is released from the law of her husband," *and* "let her marry in the Lord whom she wishes," through the permission and authority of the Apostle her infamy is abolished.

Chapter V

Latin source headnote: It is summarized as the preceding chapter.

Innocent III, to the noblewoman P.

Since according to the Apostle a woman, when her husband is dead, is released from his law and has free faculty to marry whom she wishes, only in the Lord, she ought not to sustain the loss of legal infamy when, although after the death of her husband she marries within the time of mourning, namely the space of one year, she nevertheless uses the power granted to her by the Apostle, especially since in these matters secular laws do not disdain to imitate the sacred canons. *Therefore, since you dispose to pass to second vows, knowing that it is better to marry than to burn, we commend your purpose in the Lord, and by authority of the present letters we more expressly prohibit this from being imputed by anyone as loss or infamy to you or to him who shall marry you, since you have the free faculty granted to you by the Apostle to marry only in the Lord.*

END OF THE FOURTH BOOK.

Book V

The Compilation of the Decretals of Lord Pope Gregory IX

Book V

Title I: On Accusations, Inquisitions, and Denunciations

Chapter I

Latin source headnote: In judicial proceedings inquiry must first be made concerning the person of the accuser.

Pope Felix.

If the accuser shall not have been lawful, let the accused not be wearied, [*because priests ought to be free for sacrificing, etc.*]

Chapter II

Latin source headnote: He who did not first give warning is repelled from denunciation.

The same, to the Bishops established throughout Gaul.

If any bishop shall have been accused by those accusers who are to be received, after *he himself* shall have been charitably admonished by them to amend *that very* cause, and shall have been unwilling to correct it, not formerly, but now, let his causes be canonically referred to the *highest* primates, [*who in a suitable place within that province, etc.*]

Chapter III

Latin source headnote: An accusation against a prelate ought to be handled before those whose interest is involved.

Gregory, to the Duke of Campania.

That conduct of prelates (*And below:*) But if there is anyone from the monastery of the aforesaid abbot who can say *anything* that pertains to his fault and guilt, we [*wish this not to be neglected, but rather, indeed, together*] with those whose interest is involved, we wish the cause to be [*altogether*] strictly [*and solicitously*] investigated, so that he may either be condemned or absolved. [*But if no one can be found, etc.*]

Chapter IV

Latin source headnote: One who is accused or denounced concerning some crime cannot meanwhile be promoted.

The same, to the Empress Constantia.

Almighty God: (*And below:*) [*But his other perverse deeds, namely bodily evils, which I have learned—either that he was elected by means of money, or that, while excommunicated, he presumed to celebrate mass—I cannot, for God's sake, pass over without inquiry. But I desire and beseech the Lord that nothing may be found in him concerning*

those things that have been said, and that his cause may be concluded without peril to my soul. Nevertheless, before these things are ascertained, the most serene lord commanded by a directive sent forth that I receive him when he comes with honor. And] It is very grievous that a man concerning whom so many and such things are reported should be honored, when they ought first to be investigated and examined. [*And if the causes of bishops, etc.*]

Chapter V

Latin source headnote: A bishop cannot repel from accusing him, by an exception of crime, one whom he previously neglected to separate from his familiar company.

Pope Paschal.

Let it be lawful for none of the bishops to repel from accusing him those whom, before he knew that he was to be assailed by them, he neglected to separate from his common familiar company.

Chapter VI

Latin source headnote: One acquitted of a certain crime cannot be accused again of the same crime.

From the Council of Mainz.

Concerning those crimes of which the accused has been acquitted, the accusation cannot be repeated.

Chapter VII

Latin source headnote: Those dwelling with the enemies of the accused are repelled from accusation.

Pope Stephen.

Let those dwelling with enemies [*also*] be repelled from accusation, [*and all laymen,*] because the affection of friendship is accustomed to incite the vexations of calumny. [*Nor are those persons to be received in your accusation, etc.*]

Chapter VIII

Latin source headnote: It prescribes the penance of a calumnious accuser when death or disablement of a limb follows therefrom.

From the Brocardic Book XLIV.

You accused someone, and through your accusation he was killed: unless you did this for the sake of peace, you are to do penance for forty days on bread and water, which is called a carina, together with the seven following years. But if through your delation he was disabled, you ought to do penance through three Lents [*on the lawful ferial days*].

Chapter IX

Latin source headnote: A judge proceeds upon a notorious matter when no one is accusing.

Augustine, on Genesis, concerning the death of Abel.

The evidentness of a perpetrated crime does not require the outcry of an accuser.

Chapter X

Latin source headnote: Laymen or enemies cannot accuse clerics.

Alexander III, to the Bishop-elect of Gaeta.

When P. Manconella, priest, on the one side, and Bonus, priest, and I. Bonus Cocti, his lay brother, on the other, were constituted in our presence, we did not consider that the same I., because he was a layman, ought to be admitted to the accusation of the *aforesaid* P. And when the aforesaid B. more steadfastly accused the same P. concerning the crime of simony, we repelled him from the accusation, both because he had been brought forward as a witness in that cause, and because the aforesaid I., his brother, had previously accused P. himself before you, especially since P.'s brother had earlier accused the aforesaid B. concerning a similar cause. Therefore, because one after the other was accusing the aforesaid P. with insistent alternation, we admitted neither to his accusation, but considered that purgation concerning the crimes charged ought to be imposed upon both priests. And therefore *by apostolic writings, commanding your discretion*, we command that each of them cause himself to be purged with three priests. *The compurgators, etc.* (*cf. c.* 7, *On Canonical Purgation V.* 34.)

Chapter XI

Latin source headnote: A monk can accuse an abbot, and he will have the necessary expenses of the suit from the goods of the monastery.

The same, to the Bishop of Worcester.

On your part *a question of this sort was proposed to us: whether monks ought in any way to be admitted to an accusation of their abbots. Concerning this, indeed,* we respond to your prudence thus: monks, unless another *manifest and* reasonable cause impedes, are by no means to be repelled from accusing him on the ground that they are known to be under the obedience and subjection of the abbot, although they cannot accuse others. And since they have nothing of their own, the necessary expenses ought to be supplied to them from the goods of the monastery until the cause receives its due end. [*Concerning confirmations, etc.* (*cf. c.* 2, *On Confirmation II.* 30.)]

Chapter XII

Latin source headnote: A drunken priest who celebrates mass without digestion having first taken place ought to be deprived of his church. This is what it says, in a manner suitable for all who are going to read it.

The same.

If it shall be established that the *often-mentioned* D. was not granted the *aforesaid* church perpetually, but was committed to him for a time, and concerning his drunkenness, and that he passed the night in a tavern in such a way that on the next day, no sleep having first taken place, he sang mass: (*And below:*) *But also* if he shall have been reasonably convicted of this in judgment before his bishop *or archbishop*, or, whether accused or called to account, shall have confessed without coercion *before several persons*, you shall, *notwithstanding any appeal*, impose perpetual silence upon him concerning the same church, compelling him to desist from assailing B. But if the *same* church was canonically granted and delivered to the same *D.*, and afterward he was not convicted of any crime for which by

law he ought to be despoiled, or if, after an appeal, as he once alleged, he was despoiled of that church, you shall cause it to be restored to him and permit him to remain in peace.

Chapter XIII

Latin source headnote: An enemy is repelled even from a voluntary exception.

The same.

We remember that *already some time ago* we commanded you, *by way of command*, to take care to impart the gift of blessing to *our beloved daughter* C., abbess *of the monastery of Saint Zacharias*, whose election we confirmed. But because H. on behalf of the other party *approached our presence* and appealed from you *thereupon* to our hearing, proposing that he was accusing her of simony, *you therefore* deferred carrying our mandate into effect. But because it is not fitting for you in this matter to defer to the appeal of the same H., *since it is not lawful for laymen to bear testimony against clerics or monks, and* since the same *H.* was her manifest enemy and bore testimony against her: *we, if we remember well, commanded that the same abbess be blessed, and still, appeal having been removed, by apostolic writings* we command that, when you have been requested thereupon, you do not delay imparting the gift of blessing to the aforesaid abbess, *opposition and appeal ceasing*.

Chapter XIV

Latin source headnote: One saying before a judge that he will accuse someone can, before inscription, desist without penalty and not accuse; but perpetual silence is imposed upon him when he desists. And according to this summary this text is noteworthy. Abbas.

Innocent III, to the Archbishop of Besançon.

Although in blessed Peter, *prince of the Apostles, the faculty of binding and loosing has been attributed to us by the Lord, which we ought freely to exercise over subjects according to the demand of their merits, nevertheless, following the example of him who saves all and wills no one to perish, we apply ourselves more willingly to loosing than to binding, although there are some faults in which it is a fault to relax vengeance*. Indeed, when *formerly* it had reached the hearing of the Apostolic See from the letters of B., dean of Saint Stephen, and T., I., and M., canons of the church of Besançon, that you had committed various crimes, and you had been denounced by them through the same letters concerning perjury, the crime of simony, and incest, Pope Clement, *of happy memory*, our predecessor, preserving judicial gravity, assigned to you a definite term at which you should present yourself before the apostolic countenance to respond to the charges. But when *you*, according to the tenor of the citation *made to you*, had approached the Apostolic See, *with you and the beloved sons I. and O., archdeacons, being constituted before the Apostolic See, we waited for some time to see whether perhaps any persons would proceed against you and, by making inscription, would propound what they had intimated concerning you in their letters. But when* no one appeared who would thus assail you concerning the aforesaid matters, lest we should seem to omit anything among the contingencies, we diligently asked I. and O., archdeacons, constituted in our *and our brothers'* presence, whether they wished to propound anything against you concerning the aforesaid matters for themselves or for others, and whether they would lawfully demonstrate what they had written. They answered that they had written these things not with the purpose of accusing; but because *you* seemed incorrigible in certain things, they had considered that certain matters concerning you ought to be intimated to the Apostolic See; but the messenger who had approached to obtain the letters had

exceeded the form of his mandate. We therefore, *desiring to consult your reputation*, considered that silence concerning the aforesaid matters ought to be imposed upon the said canons *against you*, so that henceforth it may not be lawful for them to accuse you concerning these things or even to defame you, *following the example of him who, when he had said to the woman, "Woman, has no one condemned you?" and she said, "No one, Lord," said, "Neither shall I condemn you; go, now sin no more."* But because the aforesaid canons wished to desist short of the bond of inscription, we did not consider that, by permission of law, this ought to be imputed to them. But lest we seem to proceed less canonically in your absolution, although we delight more in the fragrance of the good reputation of our fellow bishops than in their infamy, we considered that the inquiry into your reputation ought to be committed to *our venerable brother* the Bishop of Chalon and to *our beloved son* the Abbot of La Ferté. [*Given at Rome, etc., on the fourth day before the Ides of June,* 1198.]

Chapter XV

Latin source headnote: A proctor is not admitted to prosecute a criminal accusation, although he could allege a cause of absence or other exceptions not touching the crime proposed; and one who swore to stand by someone's mandate is not admitted to accuse him if, by force of the oath, it was enjoined upon him that he not accuse. This is what it says, and it is customarily alleged for this proposition, and in this it is very widely known.

The same, to the Archbishop of Salzburg.

The *beloved son* A., canon of Prague, coming [*formerly*] to the Apostolic See, proposed before us against *our venerable brother* the Bishop of Prague, among other things, that, although he was the son of a priest, he had been intruded into the church of Prague, and, contrary to the privilege of the same church, *granted to it by imperial liberality and confirmed by the Apostolic See*, had rendered homage to the *beloved son and nobleman*, the Duke of Bohemia, *and had received the regalia from him*, thereby subjecting the church of Prague to servitude. [*He also proposed that he manifestly had a wife, by whom he begot sons; that he fabricated a forged seal; that he was a drunkard, fornicator, and public entertainer, so that on one occasion, together with two jesters, in a contest undertaken against three other entertainers, he was grievously wounded in the nose and almost mutilated in it, as is apparent today, and it is believed that one of the other three jesters against whom he was contending, who died there, was killed by him. To this the same A. added that, after the treasure of the church of Prague, to the amount of a thousand marks, had been badly dissipated by him, he did not fear to confer upon the counsellors of that duke as many as fifty villages and more, to the grave detriment of the church of Prague, and he gave to the duke himself a certain notable castle which had been bestowed upon the same church out of regard for piety by O., formerly Duke of Bohemia.*] Wherefore we remember that we cited the aforesaid bishop peremptorily for the feast of the Lord's Resurrection *then most recently past*. But the same *bishop*, for his excuse, alleged by messengers and letters the hazards of the roads, the imminent consecration of chrism, and the fact that the son of the *nobleman*, the prince of Bohemia, was at that time to be baptized by him. Although, judging excuses of this sort frivolous, as they were, we reputed him contumacious, and we could not receive his proctors in a criminal cause, nevertheless we granted to them *our beloved sons G., cardinal deacon of Saint Angelo, and H., cardinal deacon of Saint Eustace,* as auditors, so that, if they could, they might excuse him in some measure. And when the aforesaid A. repeated the charges before them, *to him* it was answered on the opposite side that, when letters had formerly been obtained concerning this matter for *our venerable brother* the Archbishop of Magdeburg, the same A., *who alone was proceeding against the bishop*, seeing himself fail in the proof of the charges, *having put*

off his clothes and with bare feet, humbly prostrated himself at his feet, sought pardon, and confessed that he had proceeded calumniously against him. But since he had sworn concerning this matter to stand by the mandate of the same archbishop, the latter commanded him under the obligation of the oath taken that he should not thereafter dare to propound such things against the same bishop. Therefore, since it was established to us from A.'s own confession that he had taken an oath of this sort and had received such a mandate, we considered that silence ought to be imposed upon him concerning his assault upon the said bishop, nevertheless imposing upon the same bishop, on account of his contumacy, a citation and, on account of the infamy, purgation.

Chapter XVI

Latin source headnote: A denouncer of a crime does not make inscription, because he tends toward correction; but an accuser makes inscription, because he tends toward punishment; one excepting, however, makes inscription for an extraordinary penalty if through the exception someone is cast down from what he has obtained, but otherwise it is otherwise. This first. Secondly, it says that, while a crime is examined by way of exception, a proctor can intervene.

The same, to the Prior of Saint Fridianus and Master B., Canon of Pisa.

Concerning those matters about which you wished to consult us, we respond briefly to your inquiry that a crime can be opposed in three ways: by denouncing, excepting, and accusing. When a crime is opposed by way of denunciation, inscription is not necessary; but when it is *objected* by way of accusation, it is necessary to make inscription, since accusation is instituted for deposition, but denunciation is to be made for correction. But when a crime has been objected by way of exception, a distinction must be made as to why and when it is opposed. If it is objected so that someone may be repelled from accusation or testimony, it is not necessary to make inscription. But when it is opposed so that someone may be excluded from promotion to an office or benefice, if it is objected before confirmation, no one is compelled to make inscription, because a crime proved in this manner impedes the person to be promoted, but does not cast down one already promoted. But after confirmation, namely when someone is to be ordained or even consecrated, because it both repels from obtaining and casts down from what has been obtained, the exceptor, if he fails in proving, is to be bound to an extraordinary *indeed* penalty according to the judgment of a discreet judge, yet short of the bond *of inscription*, because, when the crime has thus been proved, he loses what had been acquired for him through election and confirmation; but on this account he does not lose what he had previously. For although the matter concerns a crime, nevertheless a question of this kind is not criminal; whence it can rightly be handled through a proctor. *For this, etc.* (*cf. c.* 8, *On Penalties V.* 37.) [*Given at the Lateran on the third day before the Ides of February, in the fifth year of our pontificate,* 1203.]

Chapter XVII

Latin source headnote: General inquisitors, if they have not observed the due order of inquisition, ought prudently and cautiously to correct themselves. This first. Secondly, it sets out the form of oath that inquisitors exact from those under inquiry.

The same, to the Bishop of Vercelli and the Abbot of Tileto.

How and when *a prelate ought to proceed to inquire into and punish the excesses of subjects is gathered clearly from the authorities of the New and Old Testaments, from which the canonical sanctions afterward proceeded on this*

matter. For it is read in the Gospel that the steward who had been defamed before his lord as though he had dissipated his goods heard from him: "What is this that I hear of you? Render an account of your stewardship, for now you will no longer be able to be steward." And in Genesis the Lord says: "I will descend and see whether they have fulfilled in deed the outcry that has come to me." From these authorities it is manifestly proved that not only when a subject, but also when a prelate, transgresses, if his excess reaches the ears of the superior through outcry and reputation—not indeed from the malevolent and slanderous, but from provident and honorable persons, nor only once, but often, which the outcry indicates and the defamation manifests—the truth ought to be investigated more diligently before the elders of the church, so that, if the quality of the matter demands it, canonical severity may strike the fault of the delinquent; nevertheless, the same person is not to be both actor and judge, but, as though reputation were making delation or outcry were denouncing, he is to discharge the duty of his office. Although this must be diligently observed with subjects, it must nevertheless be observed more diligently with prelates, who are set up as though a mark for the arrow. And because they cannot please everyone, since by reason of their office they are bound not only to reprove but also to rebuke, and even sometimes to suspend, and at times indeed to bind, they frequently incur the hatred of many and suffer snares. And therefore the holy Fathers providently established that an accusation of prelates not be readily admitted, lest, when the columns have been shaken, the building fall, unless diligent caution be applied, through which the door is closed not only to false but also to malicious incrimination. Yet they wished so to provide for prelates lest they be accused unjustly, that they nevertheless took care lest they offend insolently, finding a suitable medicine against each disease, namely that a criminal accusation, which tends toward diminution of status, that is, toward degradation, is by no means to be admitted unless a lawful inquiry precedes. But when anyone shall have been defamed concerning his excesses to such an extent that the outcry has now risen so high that it cannot longer be dissembled without scandal nor tolerated without danger, one should proceed without a scruple of doubt to inquire into and punish his excesses, not from the tinder of hatred but from the affection of charity, so that, if the excess has been grave, even if he is not degraded from order, he is nevertheless removed altogether from administration; which, according to evangelical truth, is for the steward who cannot render a worthy account of his stewardship to be removed from the stewardship. If you have observed the due order of inquisition concerning *our venerable brother* the Bishop of Novara, we commend your *intention and* discretion in the Lord. But if on any occasion you omitted it, *lest through a slight shortcut one come to grave loss*, we still wish that *the order itself* be observed at an opportune time, lest injuries arise whence laws arise. And therefore we command that, recurring to the judgment of your conscience, if *perhaps* as men you transgressed against the prescribed order, let it not shame you to correct your error, you who have been appointed to correct the errors of others, because before the strict Judge, in the measure with which you have measured, it will be measured back to you; in such a way, namely, that you find some suitable occasion through which, lest your authority become cheap, you may desist for the present as cautiously and prudently as you can, because one cannot proceed in orderly fashion from things done in disorder. But if you observed the prescribed order, *we will and command that*, all favor and fear having been put aside, having God alone before your eyes, walking by the royal road, without acceptance of persons, you proceed in *this* affair *according to the form that we considered should be expressed to you in other letters, and that you fear no man against God, but rather fear God above every man*. We wish the form of oath that you received from the clergy of Novara concerning the inquiry to be made in this affair to be observed in similar cases, namely that the clerics swear that concerning those things which they know or believe ought to be reformed in their church, both in head and members, excepting occult crimes, they will tell the inquisitors the pure and full truth. (*And below:*) *But the constitutions which we learned that you not so much made as renewed for the correction of excesses and reformation*

of morals, we approve, wishing that you cause them to be laudably observed by the clerics, commanding the prelates on our behalf, etc. (*cf. c.* 17, *On Judgments II.* 1.) [*Given on the fourth day before the Kalends of February,* 1206.]

Chapter XVIII

Latin source headnote: If the person against whom inquiry is made swore only to answer what was asked, after confession he is heard when wishing to prove excuses that do not destroy the confession but explain it; it is otherwise if he swore to tell the full and pure truth.

The same, to the Archbishop of Arles and the Abbot of Valmagne.

When the beloved sons the Abbot of Cîteaux and P. and R., monks of Fontfroide, legates of the Apostolic See, had approached the church of Agde in order to exercise the office of legation in it, because many adverse things concerning *our venerable brother* the Bishop of Agde had been intimated to them through frequent outcry, they wished to descend and see whether he had fulfilled the outcry in deed; *and therefore they bound both the bishop and the canons by the bond of an oath, that they should tell them the truth concerning the state of the church*. [*When the same bishop appealed, they reduced their depositions to writing and sent them to our presence, fixing for the bishop a suitable term at which he should present himself before our countenance to receive the apostolic mandate. But the same bishop, approaching our presence, after he heard his own confessions and the depositions of others, strove to excuse himself in many ways, assigning to us his excuses in writing. We therefore, after diligent counsel had been held with our brothers, considered that the aforesaid bishop ought to be suspended from the administration of the church of Agde because we found him culpable in certain matters, and his confessions made a prima facie case against him, rendering him suspect to us by law, since he had not yet proved his excuses, which nevertheless he steadfastly promised that he would prove.*] But because it was not established to us under what form the bishop with the canons of Agde took the oath before the said legates—whether, namely, he so swore that he would tell the full and pure truth concerning the state of the church, or *so* that he would answer truthfully what was asked—we command [*by way of command*] your discretion *by apostolic writings* that you command the same legates on our behalf, *strictly in virtue of obedience*, that they endeavor faithfully to intimate *to you* under what form he took the oath. And if, according to their response, he swore under the second form, or he himself *before you* sufficiently proves that he swore under that form, either through the depositions of the witnesses whom he produced *while constituted before the Apostolic See, which we send to you enclosed under our seal*, or even of others—since those depositions were not published, nor did *he himself* take care to renounce the production of witnesses—because according to that form he would not be bound by the obligation of the oath except only to answer the matters asked, you shall take care diligently to hear his excuses, *which we send to you enclosed under our seal*. And if he shall have proved them *evidently*, since excuses of this sort do not destroy his confessions but explain them, which are such that they can be turned *both* toward good and toward evil and therefore ought to be judged from the cause, you shall, the obstacle of appeal having been removed, absolve him *completely*, since, even if he was found culpable in certain matters, nevertheless, having been punished by the labor and shame that he incurred because of this cause, a slight fault of this sort can lightly be pardoned him. But if he shall have been unable *sufficiently* to prove those excuses concerning dilapidation, shipwreck, and simony, or if he swore under the first form, since according to that form he ought neither to have concealed truth nor mixed in falsehood, you shall, notwithstanding *those* excuses which he newly proposed *before us*, since in his confessions he made no mention at all of them—although he steadfastly asserted that he had expounded several of them to the aforesaid legates, *which they did not take care to*

write down, since he could not prove this by himself, as one who alone was examined by them—take care to remove him, *the obstacle of any opposition and appeal having been removed*, from the administration of the church of Agde, [*causing provision to be made for that church, with the counsel of the same legates, concerning a suitable person through canonical election, etc. Given on the eighth day before the Kalends of June, in the eighth year,* 1205.]

Chapter XIX

Latin source headnote: Inquiry is not made into the truth of crimes unless the infamy is first established; and then not enemies or perjurers, but suitable men, are admitted to prosecute the inquisition and to testimony; and, when the crime has not been proved, purgation is imposed upon those defamed.

The same, to the Archbishop of Tarragona, the Abbot of Saint Mary of Poblet, and the Archdeacon of Barcelona.

Since a bishop ought [*according to the Apostle to have good testimony both from those who are within and from those who are without, and according to divine law his garment ought to be woven of scarlet twice dyed and twisted linen, if at any time an adverse rumor against some bishop rises to apostolic ears, from the solicitude of the pastoral office we are bound to descend and see whether he has fulfilled the outcry in deed.*] Indeed, when the *beloved sons* G. *Grossi* and H., canons of Vic, came to the Apostolic See and proposed before us many *grave and* enormous things against *our venerable brother* the Bishop of Vic, because we ought not to pass over them under dissimulation, we considered that the inquiry into them ought to be committed to you, *brother archbishop and son archdeacon, imitating the footsteps of him who, when he had a steward and that steward had been defamed before him because he had dissipated his goods, settled an account with him*. But the said bishop, approaching our presence before your citation reached him, proposed *before us* that those who had suggested *to us* those enormous things *concerning him*, led by the swelling of malice rather than by zeal for justice, had intimated things of this sort to us, since they were his manifest enemies and associated with his foes, and intended to produce their own blood relatives and accomplices to testify against him, who ought not *for any reason* to be admitted to denounce or testify, as being transgressors of an oath taken and entangled in other crimes. *But lest through a slight shortcut one come to grave loss*, we command your discretion *by apostolic writings* that, unless you know that his reputation has been injured concerning the aforesaid matters, you do not proceed suddenly to inquire into them. But if it is necessary to proceed to inquiry, you shall admit neither the aforesaid persons nor others who shall be established to be his enemies either to prosecute the inquiry or to bear testimony against the bishop himself; but through suitable men you shall inquire more diligently into the truth concerning the things that were done, and, if nothing grave shall have been proved against him, you shall impose canonical purgation upon him. [*But if anyone, etc. Given at Ferentino on the Kalends of September, in the ninth year,* 1206.]

Chapter XX

Latin source headnote: A public concubinary, an excommunicate, a conspirator, and one who did not first give warning are repelled from denunciation.

The same.

When the beloved son (*And below:*) *You shall inquire more diligently into the truth concerning the aforesaid matters, and* if it shall be established to you that those in whose name excesses of this sort were reported concerning the bishop were at that time public concubinaries, on account of which a sentence of excommunication was promulgated against them, or that the aforesaid bishop had not been first admonished by them concerning the aforesaid excesses, or that they had conspired against him, you shall repel them *entirely from that* denunciation. Otherwise, you shall hear the things proposed on each side, nevertheless prohibiting the same bishop by our authority from presuming unduly to burden the aforesaid clerics concerning those matters on which an appeal has lawfully been made to our hearing, until the aforesaid cause has been concluded according to the form of our mandate.

Chapter XXI

Latin source headnote: A crime proved by way of inquisition is not regularly punished by the ordinary penalty; but if it impedes the exercise of order, deposition is made, as in accusation. And if it impedes only retention of a benefice, deprivation of the benefice is made, nor will the judge be able to moderate this penalty. This is what it says as far as § "The third," according to the true understanding, not well explained by the writers. — (§ 1.) Inquiry ought not to be made concerning the truth of crimes against one who is not defamed, even if an infamous libel has been offered secretly against him; nor concerning the principal matter is credence given to a witness who, having sworn, says that he is an enemy of the person against whom inquiry is made. The same applies if he says this before the oath, unless it is presumed that he said it fraudulently. This is what it says as far as § "You asked." — (§ 2.) One is not punished for a crime concerning which there is no proof except through reputation and the belief of witnesses, and through the statements of a few one ought not to be reputed defamed before the judge. This is what it says to the end.

The same, to the Bishop of Geneva and N. of Valence.

Desiring to execute without scruple of conscience the business of the inquisition which we committed to you to conclude concerning *our venerable brother* the bishop and the canons of Valence, *you asked to be taught by an apostolic oracle whether the statements and names of those whom it happens are questioned are to be published, as is customary to be done concerning witnesses in public causes; or whether it is sufficient that only their statements be published, their names being withheld, since the same bishop and canons manifestly know who were questioned; and whether exceptions or replications ought to be admitted against the same statements, since they are admitted against the persons making the statements. To this we respond briefly that not only the statements but also the names themselves, so that it may appear what was said by whom, are to be published, and lawful exceptions or replications are to be admitted, lest through suppression of names boldness be afforded for defaming falsely, and through exclusion of exceptions, for deposing falsely*. Secondly, you asked what is to be established [*by*] you if such a crime shall have been proved against anyone through inquisition as would depose one criminally accused and convicted. In this, indeed, we considered it necessary to distinguish whether it is such a crime, *namely*, as would impede the exercise of an order received or retention of a benefice even after penance had been performed—for example, if he had committed homicide or obtained an order or benefice through the vice of simony. In that case one will have to proceed as in a judgment of accusation; otherwise the discretion of the judge will be able to moderate the penalty according to the merits of the person and the quality of the excess. § 1. The article of the third doubt contained this: whether, when two or more persons under oath affirm that

someone committed some crime while they were looking on, concerning which *nevertheless* he labors under no infamy, you ought to inflict some penalty upon him; and whether at the petition of certain persons secretly delivering to you certain documents containing defamation of the bishop, one should proceed to an inquisition concerning the things contained in the documents themselves; and whether credence ought to be given to the statements of those who, after the oath, having been asked secretly whether they are enemies of those concerning whom inquiry is made, respond that they do not love them, or directly assert themselves to be their enemies, or even publicly confess this before the oath, nevertheless showing no probable causes of enmity. To these matters *likewise* we respond that no one is to be punished for a crime concerning which he labors under no infamy or no clamorous intimation has preceded, because of statements of this sort; indeed, depositions concerning it ought not to be received against him, since inquisition ought to be made only concerning those things about which some outcries have preceded. Nor, at the petition of those who secretly present a libel of defamation, is one to proceed to make an inquisition concerning the crimes contained therein, nor is credence to be given, against those concerning whom inquiry is made, to the statements of persons who, after the oath or before it, tacitly or expressly, assert that they are their enemies, unless perhaps before the oath they are presumed to do this fraudulently. § 2. You also asked what ought to be established if it should happen that nothing is found through certain knowledge, but only through reputation and the sworn belief of those who were questioned; and whether anyone ought to be reputed defamed concerning a crime as to which two or three or even more persons have said that he was defamed, although nothing adverse concerning him is heard in public. To this our response is that one will not have to proceed to a sentence of deposition solely on account of reputation and the belief of the deponents; but canonical purgation can be imposed upon the person defamed according to the judgment of the one judging, who ought not to repute him defamed because of the statements of a few, when his reputation among good and grave persons has not been injured. [*But you finally, etc. Given at the Lateran on the thirteenth day before the Kalends of January, in the fifteenth year of our pontificate,* 1212.]

Chapter XXII

Latin source headnote: If one whose crime is established in judgment seeks restitution because judicial order was not observed, he is not to be heard; rather, the superior ought to deprive him anew as a notorious criminal. This is what it says, and the case is very noteworthy according to this understanding.

The same, to the Bishop and Dean of Senlis.

At the petition of Walter, formerly Abbot of Corbie, correction of that place having some time ago been committed by us to *the beloved sons the scholasticus and Masters* R. *of Courson* and P., canons of Noyon, *of the same place, they, approaching the same monastery twice, corrected certain things there and established some matters that had to be established, while the malice of certain persons impeded the prosecution of the inquiry by delaying it; and, to repress their contumacy, they intended to invoke the secular arm*. But *our* beloved son G., cardinal deacon of Saint Mary in Portico and at that time legate of the Apostolic See, *coming meanwhile to that monastery, in the presence of the above-*mentioned G. and without his protesting, began diligently to inquire into the state of the *aforesaid* monastery. And when, after the inquiry had been completed, he summoned him to Paris to propound against that inquiry whatever he reasonably considered ought to be propounded, the same *W.*, approaching his presence, alleged

that he was unable to proceed in the correction of the monastery, which had previously been committed to the aforesaid judges by our authority, and, asserting that he held the cardinal himself suspect for just causes, made an appeal to us; the cardinal, after inspecting *those things* that had been proved against him, removed him, *on the counsel of experts*, from the government of the abbey, giving the brothers of the same place free faculty to elect another, who concordantly elected as abbot *the beloved son John, Abbot of Corbie and then* Prior of Argenteuil, *a provident and honorable man*. [*But when the said W. afterward approached the Apostolic See, asserting that he had been removed from the abbey without reasonable cause by the cardinal himself, who had been circumvented by the false suggestions of certain persons, we, wishing with paternal solicitude to provide for the tranquility of the same monastery, commanded our venerable brothers the Archbishop of Reims and the Bishop of Arras that they devote effective zeal and labor toward a settlement between the same W. and the person substituted for him; otherwise, that they inquire more diligently into the truth both through the aforesaid legate and through others, and faithfully intimate it to us by the feast of Saint Remigius next to come, so that, made more certain through their report, we might proceed in the same affair as we should see that it ought more usefully to be done. Since they were unable to make progress concerning the reformation of peace, as we received from their letters, they proceeded to inquire into the truth concerning all the aforesaid matters, receiving witnesses from each party, and transmitted to us under their own seals what they had found both through themselves and through the inquiry of the cardinal. But recently, when the aforesaid W. and I. were constituted in our presence on this account, the same W. sought to have revoked what had been done by the legate after an appeal to us had been interposed, alleging that, since correction of the monastery had been enjoined upon the aforesaid judges and they, after certain things had been corrected and some matters established there, considered that correction of the others ought reasonably to be deferred, the cardinal could not meanwhile by law proceed to the same matter, since a general mandate does not derogate from a special one. To this it was answered on the opposite side that, since the cardinal proceeded to the inquiry in the presence of W. and without his protesting, the same W. seems in this tacitly to have consented that, after the inquiry had been made, the cardinal should correct what he saw ought to be corrected. Against this the same W. proposed in this manner: that, although he did not consider that he ought to protest immediately when the cardinal began to inquire, believing that he did not wish to proceed against him but usefully to ordain something in the church without burden to himself, nevertheless, after, having been summoned by him, he learned that he intended to proceed against him, he declined his examination by appealing to our hearing. The adverse party proposed in addition that, since the aforesaid judges had omitted to proceed in the correction of the monastery and delay drew danger with it, the cardinal himself, to whom its care pertained by reason of the office of legation enjoined upon him, was able to interpose his own efforts for the reformation of that place. For since, according to the authority of the civil law, even in those cases in which solemn judicial order is observed, the prosecution of a criminal cause is not to be extended beyond two years from the joinder of issue; and since we also are known, when consulted as to how long a delegate from us who had rendered a sentence can interpose his jurisdiction so that the sentence be obeyed, to have responded that he can exercise the jurisdiction committed to him for executing the sentence for as much as one complete year; with the said judges delaying to proceed in the correction, since seventeen months had already elapsed from when they are known to have received the apostolic mandate, the cardinal was not undeservedly able to insist upon the aforesaid correction concerning crimes, although the matter was not being pursued criminally. But to this the other party responded that this would have the color of an excuse if the aforesaid judges, having been admonished by the legate, had neglected to proceed to correction. In that case their defect could perhaps have been supplied by the diligence of the legate, just as it is read in the canons concerning a metropolitan that only then can he do those things that pertain to suffragans when the suffragans neglect to fulfill them.*] *These things, therefore, and the others that each party took care to propose having*

been heard, [*after both inquiries—namely that of the cardinal and that of the aforesaid archbishop and bishop—had been diligently inspected, we understood from the depositions of sworn persons that, although at the time of W.'s promotion the monastery was burdened by a debt of eight thousand pounds, and not much later the same debt had been reduced to two thousand pounds, it had now nevertheless increased to the sum of six thousand pounds; although, as had happened earlier, the debt ought rather to have been diminished than increased from the revenues of the monastery, unless the negligence of the rector had stood in the way. And although the same W. proposed for his excuse that the debt had been increased on account of expenses made in the cause that he had against the monastery of Cluny, in which he recovered a certain priory, it was nevertheless answered to him on the opposite side that the debt ought not meanwhile to have been increased on account of those expenses, since on this account he had obligated certain possessions of the same priory, especially since scarcely a thousand pounds had been expended in the prosecution of the same affair. The said W. also added that the aforesaid debt increased by occasion of a certain house that he had newly constructed in the town of Corbie. To this the adverse party responded that he could have made expenses of this sort from the revenues of the monastery without the burden of debts, especially since on this account no small assistance had been furnished to him by the burgesses. Moreover, since it was established from his own confession that in chapter he had taken an oath not to contract new debt, and afterward he contracted debt, acting contrary to his own oath, as the witnesses depose, he seemed to be accused of perjury. To this the same W. responded in this way: that, although he first took an oath of this sort, nevertheless afterward a certain statute was made in chapter through which the oath itself was relaxed. But against this the other party replied that, since it was not established that the oath had been revoked through such a statute, and it appeared that the same W. not only took an oath not to contract debt but afterward acted against it, it was manifestly clear that he had incurred the guilt of perjury. Moreover, his insufficiency and dissolute negligence seemed manifestly to be proved. And although some of the witnesses said that, so far as lay in them, he was good, none nevertheless expressly deposed that his provision was useful to the often-mentioned monastery.*] Therefore, since *sufficient proof in such an affair* was made to us concerning such matters on account of which the aforesaid G. deservedly had to be removed, even if he ought to be restored because judicial order had not been observed, *nevertheless, on account of the aforesaid causes*, we provided that he remain deprived of the government of the abbey, removing by sentence the aforesaid prior, whom, because the aforesaid G. had been removed *in a certain manner* irregularly on account of legal order not having been observed, we understood for the same cause to have been, by consequence, less lawfully substituted. Because we removed him not on account of a vice of the person or a defect of knowledge, but on account of the solemnity of law that had been omitted, *as was said before*, we afterward restored him as abbot, [*and to the aforesaid W., etc. Given at the Lateran on the seventh day before the Kalends of March, in the thirteenth year of our pontificate,* 1210.]

Chapter XXIII

Latin source headnote: An exception of crime does not obstruct one proceeding by a possessory action to acquire a benefice, unless he is defamed concerning it; and upon one defamed, when the accuser does not prove or does not appear, purgation is imposed, in which, if he fails, he is punished as one convicted.

The same.

G., nephew of the late H., our subdeacon, approaching our presence, showed us by his complaint that, when the same H. had entered upon the way of all flesh at the Apostolic See, we considered that the prebend which he had held while living in the church of Cremona ought to be conferred upon him, *enjoining upon our venerable brother H., the bishop, and the beloved sons, the chapter of Cremona, that they*

receive him as a brother and assign to him without any difficulty both a stall in choir and a place in chapter, and the same prebend; to you also, son archdeacon, and to the beloved sons, the provost of Saint Agatha, we commanded that, if the bishop and canons did not fulfill the apostolic mandate, you should take care to execute it, the obstacle of appeal having been removed, restraining opponents by ecclesiastical censure, appeal having been removed. And when you and the same provost, as we received from your letters, had admonished the bishop and canons of Cremona to execute the apostolic mandate, they asserted that our letters had been obtained through suppression of the truth, since, while the aforesaid subdeacon was still alive, they had received the son of a certain noble citizen of Cremona as a canon and had promised him the next vacancy. They also added that before receiving our letters they had sent their messenger to the Apostolic See, and therefore, lest you proceed further, they appealed to our hearing. The young man also, to whom the same prebend had been granted by the bishop and canons, considered that complaint ought to be made to our hearing. Hence you did not proceed further, but intimated to us by your letters the things that had been done. The aforesaid G. therefore sought that, because the canons had acted contrary to the Lateran Council, we not allow the effect of our grant to be impeded, but cause him peacefully to possess the prebend itself. Even if it had been granted to the aforesaid young man, nevertheless our grant, which had preceded it, ought to prevail. But the [*beloved*] *son Bonus Ioannes, messenger of the aforesaid canons and bishop, proposed that, before the apostolic mandate had issued to them, they had granted the prebend itself to the aforesaid young man, and added that the said G. labored under public infamy concerning homicide and perjury. Hence he was not only not to be admitted to the church of Cremona, but rather was to be cast out even if he had been admitted. The bishop also intimated to us by his letters that, when he had received apostolic letters for the same G., he counselled him that, if he could do so with his conscience safe, he should purge himself at least of perjury and homicide, unless a lawful accuser appeared against him; but he himself was unwilling either to perform or to offer purgation. We therefore, attending that the son of the aforesaid nobleman, as the letters of the bishop and canons of Cremona and of our executors attested, was admitted contrary to the Lateran Council to the next vacancy, so that afterward they received as not vacant a prebend which, before a certain messenger could reach Cremona concerning the death of the subdeacon,* [*to*] *the aforesaid G. we had granted, by apostolic writings* we command your discretion that *you declare void and empty what was done concerning the aforesaid young man, and,* unless the aforesaid G. was publicly defamed concerning the crimes objected against him by way of exception, namely perjury and homicide, you put into execution the grant made to him by us. Thereafter, if a lawful accuser shall appear, you shall hear the things proposed on each side; and, if the aforesaid crimes or any one of them shall have been lawfully proved against him, you shall, *appeal having been put aside*, impose upon him *perpetual* silence concerning the same prebend. *But if they shall have been unable to prove them, you shall confirm it to him by apostolic authority.* If, however, no lawful accuser shall appear against him, and he is known to be bespattered with infamy concerning the aforesaid crimes, you shall impose canonical purgation upon him; in which, if he *perhaps* fails, you shall impose *perpetual* silence upon him. But if he shall have performed the purgation, restraining the opponents from molesting him, you shall condemn those who endeavored to impede him in *his* lawful expenses.

Chapter XXIV

Latin source headnote: A superior will inquire against a subject, especially a prelate, only concerning those matters on which infamy preceded; and then he will summon him and deliver the articles and names to him, and will publish the statements of the witnesses, and will admit his lawful exceptions, and, when a grave crime has been proved, will remove him from administration. But with regular prelates this order is not to be observed to the letter. And although in this summary a small

difference may seem to be drawn between prelates and subjects against whom inquiry is made, nevertheless it is to be drawn, as is apparent in the text.

The same, in the General Council.

How and when a prelate ought to proceed to inquire into and punish the excesses of subjects is clearly gathered from the authorities of the Old and New Testaments, from which the canonical sanctions afterward proceeded, as we formerly distinguished openly and now confirm by the approval of the sacred council. For it is read in the Gospel that the steward who had been defamed before his lord as though he had dissipated his goods heard from him: "What is this that I hear of you? Render an account of your stewardship, for now you will no longer be able to be steward." And in Genesis the Lord says: "I will descend and see whether they have fulfilled in deed the outcry that has come to me." From these authorities it is manifestly proved that not only when a subject, but also when a prelate, transgresses, if it reaches the ears of the superior through outcry and reputation—not indeed from the malevolent and slanderous, but from provident and honorable persons, nor only once, but often, which the outcry indicates and the defamation manifests—the truth ought to be investigated more diligently before the elders of the church, so that, if the quality of the matter demands it, canonical severity may strike the fault of the delinquent, not as though the same person were accuser and judge, but so that, as reputation denounces or outcry makes delation, he may discharge the duty of his office. Although this must be observed with subjects, it must nevertheless be observed more diligently with prelates, who are set up as though a mark for the arrow. And because they cannot please everyone, since by reason of their office they are bound not only to reprove but also to rebuke, and even sometimes to suspend, and at times indeed to bind, they frequently incur the hatred of many and suffer snares. And therefore the holy Fathers providently established that an accusation of prelates not be readily admitted, lest, when the columns have been shaken, the building fall, unless diligent caution be applied, through which the door is closed not only to false but also to malicious incrimination. Yet they wished so to provide for prelates lest they be accused unjustly, that they nevertheless took care lest they offend insolently, finding a suitable medicine against each disease, namely that a criminal accusation, which tends toward diminution of status, that is, toward degradation, is by no means to be admitted unless lawful inscription precedes. But when anyone shall have been defamed concerning his excesses *in such a way* that the outcry has now risen which cannot longer be dissembled without scandal or tolerated without danger, one should proceed without a scruple of doubt to inquire into and punish his excesses, not from the tinder of hatred but from the affection of charity, so that, if the excess has been grave, even if he is not degraded from order, he is nevertheless removed altogether from administration; which, according to the evangelical sentence, is for the steward who cannot render a worthy account of his stewardship to be removed from the stewardship. Therefore, the person against whom an inquiry is to be made ought to be present, unless he absent himself through contumacy, and those articles concerning which inquiry is to be made are to be expounded to him, so that he may have the faculty of defending himself. And not only the statements but also the names themselves of the witnesses are to be published to him, so that it may appear what was said and by whom; lawful exceptions and replications are also to be admitted, lest through suppression of names boldness be afforded for defaming falsely, and through exclusion of exceptions, for deposing falsely. A prelate ought therefore to arise for the correction of the excesses of subjects the more diligently, the more damnably he would leave their offenses uncorrected. Against them—so that nothing be said of notorious excesses—although one can proceed in three

ways, namely through accusation, denunciation, and inquisition, nevertheless diligent caution is to be applied in all, lest perhaps through a slight shortcut one come to grave loss: just as lawful inscription ought to precede accusation, so charitable admonition is to precede denunciation, and clamorous intimation is to precede inquisition, with this moderation always applied, that the form of the sentence too be dictated according to the form of the judgment. We do not, however, believe that this order is to be observed altogether with regular persons, who, when the cause requires it, can more easily and freely be removed from their administrations.

Chapter XXV

Latin source headnote: Metropolitans ought each year to hold a provincial council for the correction of excesses and reformation of morals, in which they ought to appoint suitable persons through the individual dioceses, who are solicitously to investigate and report matters requiring correction at the following council. And bishops ought each year to hold episcopal synods and publish what was transacted in the provincial council; those neglecting these things are suspended from the exercise of office. This is what it says.

The same, in the same council.

As is known to have been instituted formerly by the holy Fathers, let metropolitans not omit to celebrate provincial councils each year with their suffragans, in which they are to have, with the fear of God, diligent deliberation concerning correcting excesses and reforming morals, especially in the clergy, rereading the canonical rules, *and* especially those established in this General Council, so that they cause them to be observed, inflicting the due penalty upon transgressors. But so that this may be fulfilled more effectively, let them appoint through the individual dioceses suitable persons, namely provident and honorable persons, who throughout the entire year are solicitously to investigate simply and summarily, without any jurisdiction, those things that are worthy of correction or reformation, and faithfully report them to the metropolitan and suffragans and to the others at the following council, so that concerning these and other matters, as shall accord with utility and honor, they may proceed with provident deliberation and cause the things they establish to be observed, intending to publish them in episcopal synods to be celebrated annually through the individual dioceses. But whoever shall neglect to fulfill this salutary statute is to be suspended from the exercise of his office [*until he is released by the judgment of his superior.*]

Chapter XXVI

Latin source headnote: Sentences of excommunication, suspension, or interdict rendered after denunciation by the denounced abbot, or by another on his behalf, against the denouncing monks or those adhering to them are relaxed. Those despoiled are restored, and oaths concerning concealing the truth are relaxed; the statements of witnesses are delivered to the denounced person, and expenses are supplied from the goods of the monastery to the denouncing monks; and on this account they are not exempted from obedience to the abbot, yet without prejudice to the suit.

Gregory IX, to the Archbishop and the Prior of Saint Mary of Rouen.

Formerly I., V., and P. of the Order of Tiron (*And below:*) Therefore, lest the reformation of the monastery be delayed, we command that, after sentences of excommunication or suspension, if any, which the same abbot rendered or caused to be promulgated through any judges after the affair had

been begun against them and those adhering to them, have been relaxed, and after those whom the same abbot unjustly despoiled while the affair was pending have been restored, proceeding in the affair simply and summarily and without the din of judgments—since it is especially not fitting in this case for servants of God to be entangled in such things—you inquire into those things that you see ought to be investigated concerning persons and regular observances, correcting and reforming both in head and in members those things that you know to require the office of correction and reformation, with oaths, if any, that the abbot had extorted concerning concealing the truth having been relaxed; provided that, while the affair itself is pending, the aforesaid monks obey and attend to the same abbot, yet in such a way that through this the prosecution of the affair cannot be impeded. But if witnesses shall have been produced against the same abbot, you shall provide him a copy of their statements. Moreover, you shall cause the expenses made on this account to be supplied to the aforesaid monks, and to three or four from among them, or to others whom you consider ought to be assumed as suitable to prosecute the said affair, from the goods of the same monastery; and the expenses to be made that are necessary for the prosecution of the affair itself, after accounting for any things that they received on this account, are to be supplied from the goods of the monastery, since they have nothing of their own. Opponents, etc.

Chapter XXVII

Latin source headnote: Against a prelate denounced concerning dilapidation a commission is made to inquire into the truth, and while the affair is pending the power of alienating ought to be interdicted to him.

The same, to the Bishop of Cister. and the Abbots of Alde. and Salen.

The excesses of prelates [*are to be corrected the more severely, the more persons are corrupted by their example if they remain uncorrected.*] Indeed, the beloved sons C. [*C., E., H.*] and four other canons of Freising showed by denunciation [*to Pope H. of good memory, our predecessor,*] that [*our venerable brother*] the Bishop of Freising so gravely dilapidates and consumes the goods of his episcopate—which, as they say, he obtained less than canonically—that, unless a remedy is applied quickly, the same episcopate will through him be brought to the irreparable disgrace of dissolution; and, prodigal not only of property but also of his reputation and salvation, he leads an enormously dissolute life, [*so that there is no place for denying his incontinence, since it is proved by the manifest evidence of cohabitation; moreover, having cast aside the modest gravity of a pontiff, in words and deeds he exhibits himself so frivolous and irreprehensible that his life is a snare and scandal to those for whom he ought to be an example of honor. Therefore, because we neither will nor ought to pass over these things under dissimulation, following the form of the letters that the said predecessor provided should be sent concerning this matter,*] we command your discretion [*by apostolic writings*] that, personally approaching the place, you solicitously inquire into the truth and, faithfully committing it to writing, transmit it to us enclosed under your seals, assigning to the same bishop a term at which he is to present himself [*personally*] before our countenance to receive according to his deserts; meanwhile the power of selling, giving, infeudating, or in any way alienating the goods of the same church being entirely interdicted to the [*bishop*]. [*But if, etc. Given at the Lateran on the fifth day before the Kalends of May, in the first year,* 1227.]

Title II: On Calumniators

Chapter I

Latin source headnote: A subdeacon who calumniously accuses a deacon is deprived of the subdiaconate, publicly chastised with lashes, and sent into exile.

Gregory, to Anthemius the Subdeacon.

Since crimes that are brought against innocent persons, and especially against consecrated men, are to be punished more severely, consider how culpable you *all* are who sat in the cause of John the deacon, since no suitable penalty from your decision chastised Hilary, his accuser. [*Nor should you believe this to be suitable for your excuse: that our brother and fellow bishop Paschasius alone is said to have deferred it when you, as though wishing to judge, were present. For if zeal for rectitude had flourished in you, one person could more easily have been reasonably persuaded by many than many could without cause have been delayed by one.*] Therefore, because the evil of such great wickedness ought not to pass without worthy vengeance, we command that the same H. first be deprived of the office of the subdiaconate, which he unworthily exercises, and, having been publicly chastised with lashes, be deported into exile, *so that the punishment of one may be the correction of many, etc.*

Chapter II

Latin source headnote: A denouncer who fails in proving the crimes is suspended from office and benefice until he purges his innocence.

Innocent III, to the Bishops of Zamora, Segovia, and Ávila.

When the beloved son, the scholasticus of Palencia, had approached the Apostolic See and had reported *to us* various excesses concerning his bishop, we committed examination of the excesses charged to *our venerable brother, formerly Bishop of León and now Archbishop of Compostela, and to the beloved sons, the Abbots of Valbuena and Mataplana in the diocese of Palencia*. [*After the truth had been more fully investigated through witnesses concerning twofold simony, dilapidation, absolution of those falling under the canon of a sentence promulgated, the fact that he disdained to defer to appeals interposed to us, and also the fact that he held a dignity vacant in his own hands beyond the time established in the Lateran Council, and that he furtively took away a certain instrument in which episcopal rights are distinguished from the rights of canons, and concerning certain other matters, they faithfully transmitted the inquiry itself to us with the depositions of the witnesses.*] But when we diligently examined the course of the affair *and the statements of the witnesses,* and were unable to understand that anything among the aforesaid matters had been sufficiently proved, we decree, *on the counsel of our brothers*, that the same bishop is to be absolved from the charges, commanding you *by apostolic writings* that you suspend the aforesaid scholasticus from office and benefice until he has canonically purged his innocence, namely that he did not proceed to propound crimes of this sort with the intention of calumniating, so that others, terrified by a similar penalty, may not readily leap to the defamation of their prelates. [*But if not all, etc. Given at the Lateran on the fifth day before the Ides of May, in the tenth year,* 1207.]

Title III: On Simony, and That Nothing Is to Be Demanded or Promised for Spiritual Things

Chapter I

Latin source headnote: A bishop, or his ministers or notaries, ought to demand nothing temporal for an order conferred by him.

Gregory, presiding over a general synod.

In ordaining *a bishop, the pontiff imposes his hand; the minister reads the Gospel lesson; and the notary writes the letter of his confirmation*. *But* just as the bishop ought not to sell the hand that he imposes, so neither ought the minister or notary to sell his *own* voice or pen in his ordination. We therefore altogether prohibit the person ordained from giving anything for ordination or use of the pallium, or for charters and small loaves. [*Concerning the aforesaid things, etc.*]

Chapter II

Latin source headnote: One who through money cast someone out of his church and afterward intruded himself is to be deposed.

From the Council of Mainz.

One who through money shall have expelled another *priest lawfully* ordained in a church, and shall have claimed it for himself in such a manner, is altogether to be deposed.

Chapter III

Latin source headnote: Any Catholic is admitted to accuse concerning the crime of simony.

Pope Deodatus.

If the Lord and master of all, who was without sin, gave one person licence to accuse, *how much more is one who is known to be polluted by the stain of Simon to be convicted by the assertion of one person?* Therefore, *in such a matter* no Catholic is to be rejected, but he is to be entreated with great prayers to assert the truth for exposing the rage of simony.

Chapter IV

Latin source headnote: A simoniac under accusation is prohibited from the administration of divine things.

The same.

We deemed it necessary to prohibit the accused simoniac *most earnestly through our writings* from celebrating the solemnities of masses until what he was should be more truly established.

Chapter V

Latin source headnote: It says the same as the preceding chapter, except that the former chapter speaks in accusation and this one in inquisition; as the former speaks of a simoniac in general, this one declares it concerning order.

The same.

Whenever *something is said to have been done contrary to ecclesiastical discipline, lest fault from dissimulation reprove us before God, we do not dare to leave it uninquired into*. It has *therefore* reached us that you were ordained through the simoniacal heresy. *But many other things were also said here concerning you, among which one was especially important*. Therefore we deemed it necessary to prohibit you *through our writings* from celebrating the solemnities of masses until we should learn more truly what the case is.

Chapter VI

Latin source headnote: A simoniac is to be deposed.

Pope Lucius.

For just as the simoniacal pestilence surpasses other diseases by its magnitude, so, without delay, as soon as its signs have become manifest through any person, he ought to be eliminated and repelled from the Church of God. *For Peter, the first pastor of the Church, recognizing the inward parts of Simon not by the attestation of any man but by the inspiration of the Holy Spirit, punished him without any hearing with a terrible and sudden death.*

Chapter VII

Latin source headnote: A slave, a prostitute, and criminals can accuse a simoniac.

Deodatus.

So great is the stain of this crime that even slaves are admitted to accusation against masters, and any criminals whatever. Likewise, every sinner can sing mass except a simoniac, whom *even* anyone can accuse so that he may be removed from an order badly received, even a prostitute.

Chapter VIII

Latin source headnote: It is simoniacal to receive a price for entry into religion, for granting priories or chapels, for instituting prelates, for granting burial, for chrism, for holy oil, for the blessings of those marrying, or for other sacraments; nor does a contrary custom avail. This is what it says together with the following chapter.

Alexander III, in the Council of Tours.

Avarice is not sufficiently *usefully reproved by the people if it is not guarded against in every way by those who appear to be constituted in the clergy, and especially those who* [*having despised the world*] *profess the name of religious persons* [*and*] *the rule*. We therefore prohibit that any money be demanded from those who wish to pass into religion. Nor are any priories or chaplaincies of monks or clerics to be sold by annual alienation. Nor is any price to be demanded from the person to whom their government is committed for the commission of them. *The authority of the holy Fathers manifestly declares this to be simoniacal.* Hence whoever shall presume to attempt anything against this decree, both the person who gave and the person who received or consented, is not to doubt that he will have a portion with Simon. Likewise, let no exaction of any price be attempted for burial or for receiving chrism and oil, nor let anyone defend his guilt under the pretext of any custom, because length of time does not diminish sins but increases them.

Chapter IX

Latin source headnote: It is summarized above in the preceding chapter.

From the Lateran Council.

Since in the body of the Church *all things ought to be handled from charity, and what has been freely received ought freely to be bestowed,* it is exceedingly horrible that venality is reported to have a place in certain churches, so that something is demanded for seating bishops or abbots or any ecclesiastical persons in their seat, or for introducing priests into a church, and also for burials and funeral rites of the dead, and the blessings of those marrying, or other sacraments, *and the person who needs them cannot receive them unless he takes care to fill the hand of the giver*. But many think this to be lawful *for them* because they believe the law of death has gained force through long custom, not *sufficiently attending, because they are blinded by cupidity,* that crimes are the graver the longer they have held an unhappy soul bound. Therefore, lest these things be done hereafter, we more strictly prohibit that anything be demanded either for bringing ecclesiastical persons to their seat, instituting priests, burying the dead, blessing those marrying, or conferring or having conferred other sacraments. But if anyone shall presume to act against this, let him know that he will have a portion with Gehazi, *whose deed he imitates by the exaction of a base gift*. [*We prohibit, etc.; cf. c.* 7, *On Procurations III.* 39.]

Chapter X

Latin source headnote: Nothing besides procuration is to be demanded for the consecration of churches.

The same, to the Bishop of Vigilia.

Since the Roman *Church, over which, although unworthy, we preside, is the mother and mistress of all churches, we are compelled by the duty of the government received to respond, as the Lord shall grant us, to the consultations of individual persons, so that doubtful questions may be entirely untied by the providence of the Apostolic See. But you asked, brother bishop, that it be written back to your fraternity whether you ought to have anything besides procuration for the consecration of churches. And we* respond thus to your consultation: you can and ought to demand nothing besides procuration for the consecration of churches. *But you can demand a moderate procuration from the same church, since the Apostle says: "No one is compelled to serve as a soldier at his own expense."*

Chapter XI

Latin source headnote: One convicted of simony is to be deposed; the same applies to a defamed person who cannot purge himself.

The same, to the Archbishop of Toledo.

Concerning this, moreover, *that the king and his princes are said to have received money from Bernard, formerly Bishop of Osma, so that they would furnish assent to his election, and* that the *same* Bishop of Osma is said to have promised benefices *of a fixed revenue* to the archdeacon, and a priory to a certain cleric before his election, so that each *of them, namely the archdeacon and the cleric,* would consent to him, we respond *this* to your prudence: if it is manifest that the same archdeacon and cleric received what was promised for a cause *so iniquitous and detestable,* or *if* they confessed it in court or were lawfully convicted, they are to be perpetually deposed from the ministry of the altar. But if it is manifest, yet they were

neither convicted nor confessed concerning it, but labor only under public infamy, canonical purgation ought to be imposed upon them. If they fail in it, they are to be punished as authors of so great a crime. But you ought *solicitously to admonish* the king and his princes *and diligently* induce them that, if they received anything from the aforesaid bishop so that they would furnish assent to his election, they restore it without diminution to the church of Osma, since they cannot retain it without grave peril to their salvation.

Chapter XII

Latin source headnote: It is simoniacal to promise an ecclesiastical benefice for temporal service.

The same, to the Archbishop of York.

When R., a cleric *of Pontefract*, and the nobleman V. [*W., son of Godric, because of the controversy that was being conducted between them concerning a certain church which the same R. asserted had been given to him by the aforesaid knight,*] were constituted in our presence, because the same V. could not delay longer, *at his departure he constituted our beloved son Master Milo, your messenger,* a sufficient respondent for himself in that cause. And when we understood from the mouth of the aforesaid R. that the aforesaid knight had promised to give him the *aforesaid* church if he could advance a certain affair of the same *knight* in our presence, and that through this the promise itself contained simoniacal depravity, we considered that silence concerning the same church ought to be imposed upon R. himself. *And therefore by apostolic writings, commanding your fraternity, we command that you in no way permit the aforesaid knight to be burdened by the aforementioned R. or others concerning the aforesaid church by occasion of the aforesaid controversy.*

Chapter XIII

Latin source headnote: A notorious simoniac is deposed from his benefice; the same applies to a defamed person who cannot purge himself.

The same, to the Bishop of Cister.

It has been intimated *to our ears* that, *while the episcopate committed to you was vacant*, very many clerics *were* instituted in churches of your episcopate *who* are said to have entry through simony and to be bespattered with infamy therefrom. Hence, *because it is unworthy that they remain in such a crime or such a base suspicion, by apostolic writings, commanding your fraternity*, we command that, if there are any concerning whom it is public and notorious that they entered the aforesaid churches simoniacally, you remove them, *appeal ceasing*, from the churches acquired in such a manner. But upon those whose crime is not public and notorious, if they labor under public infamy, you shall impose purgation with five or six members of their own order as oath-helpers, *within forty days after receipt of these letters*; if they fail in it, you shall perpetually deprive them of benefices of churches of this kind, *taking more attentive care to receive such persons for their purgation concerning whom it is probable that they ought not to perjure themselves under anyone's influence*.

Chapter XIV

Latin source headnote: It is simoniacal to conceal a sinner for a price or favor, to reconcile one who is not penitent, or to remove from reconciliation one who is worthily penitent.

The same.

Let no priest receive a gift or any temporal advantage—indeed, a spiritual detriment—from anyone publicly sinning *or incestuous*, in order to conceal his sin from the bishop or his ministers; nor, out of regard for any person, *or* kinship, or familiarity, sharing in the sins of others, let him refuse to make this known to the bishop. Nor let him bring anyone who is penitent, or less worthily penitent, to reconciliation by grace or favor and bear testimony of reconciliation for him; nor through any malice remove [*any other person*] worthily penitent from reconciliation, because each is simoniacal.

Chapter XV

Latin source headnote: A church cannot be bought or bought back. This is what it says according to the letter.

The same, to the Bishop of Worcester and the Prior of Acre.

We received the complaint of the monks of Acre *transmitted to us*, that, when they had obtained a certain manor *which is called Vella*, with its appurtenances, and the church of Genen. from the monks of Cardon under an annual payment of fifteen pounds, and had received a charter concerning it from those monks, *a certain* prior of theirs, without consulting the chapter, resigned the aforesaid manor *and church* and charter to the monks of Cardon after receiving money. Hence, because the aforesaid monks of Acre complain that they have been unjustly burdened, *and it falls to us to correct anything attempted less than reasonably, we commit the cause itself to your experience, and by authority of the presents* we command that, the parties having been summoned *before your presence, you hear more diligently the things proposed on each side and* conclude the aforesaid cause, *the remedy of appeal having been removed*, by concord or judgment, knowing that, just as the aforesaid church could not be bought, so neither could it be bought back. But if the monks of Cardon, lawfully cited, disdain to approach your presence and stand in your judgment, you shall introduce the same monks of Acre into possession of those things concerning which the controversy is conducted, *opposition and appeal ceasing*, and shall not permit them thereafter to be molested without judicial order. *But if each of you cannot be present to execute these things, let the other nevertheless execute them.*

Chapter XVI

Latin source headnote: Money ought not to be demanded from churches for chrism, even if custom has this.

The same.

Those things that proceed from the *root of avarice and cupidity and burst forth into the appearance of simoniacal depravity are to be completely uprooted, and those things that proceed from thorns and thistles are to be cut away with the sickle of apostolic moderation. But* we have heard that you extort coins for chrism from churches *with rash audacity*, which *under different names* you now call cathedraticum, sometimes a paschal payment, and at times *indeed* an episcopal custom. But because this is known to be simoniacal *and generates peril to souls, by apostolic writings* we command you, *and by commanding we enjoin*, that *from churches, under* the pretext of any custom or prelacy, you by no means demand the aforesaid coins *hereafter*, knowing for certain that, if you presume this *with rash audacity*, you will not undeservedly be able to fear peril to *your* order and dignity. *Nevertheless also, etc.* (*cf. c.* 12, *On Procurations III.* 39.)

Chapter XVII

Latin source headnote: To perform homage for obtaining spiritual things is simoniacal.

The same.

From your diligent report it became known *to us* that H., Archdeacon of Canterbury, *enticed you by many promises, and through the admonition and solicitation of certain great men* induced you to perform homage to him and furnish fidelity, in such a way *indeed* that he would provide you with an ecclesiastical benefice each year. Hence, because an obligation of this sort is *sufficiently* unlawful and exists contrary to the advancement of your salvation and also his, *as your discretion by no means ignores, concerning this* you more insistently *and supplicantly* asked to be absolved by us, adding that henceforth you would receive nothing at all from him from the established benefice. Wherefore we, attending that your petition *in this matter* is honorable and favorable, absolve you from homage and fidelity to the aforesaid archdeacon, especially since things furnished in this manner are known to be contrary to divine and human laws, *by the authority of blessed Peter and also our own*, in such a way that you receive worthy penance therefrom from *some* discreet bishop or priest *and endeavor to be reconciled to God according to his counsel*. But lest you can be bespattered by any mark or infamy on this account, we have considered that letters of our absolution ought to be granted to you, by which you may exist safe and fortified against the bites of those who bark and which you can display as testimony of our indulgence.

Chapter XVIII

Latin source headnote: An ordination or consecration is not judged simoniacal although something was given to the ordainer without an agreement.

The same, to the Archbishop of Esztergom.

Although we by no means fail to recognize that your questions *arise from the fervor of religion and are brought to us from the affection of inward devotion that you have toward us and the Church*, nevertheless you must not doubt in these things beyond what is fitting, since human laws say that certain persons, *content* with slender religious scruple, disdain to furnish even necessary and lawful sacraments, calling that religious scruple slender which hesitates in such things where one ought not to hesitate in any measure. *Hence the Psalmist says: "They trembled* [*with fear*] *where there was no fear."* Therefore, in this matter—namely that the *beloved* [*son of ours*] P., cardinal priest *of the title of Saint Lawrence in Damaso, but then cardinal deacon of Saint Eustace and* legate of the Apostolic See, approached those parts concerning your election and in order to deliver the pallium to you, and that *our beloved son Albanus*, your brother, foreknowing his necessity, sent him one horse, with you *entirely* ignorant, because in coming by sea he brought no mounts or few with him—you ought in no way to fear, since in receiving or giving gifts three things are especially to be attended: namely, the quality of the person giving and the person receiving, the quantity of the gift, and the time of the donation. Let us *solicitously consider* the quality of the persons, from whom and to whom it was given, namely whether by a poor man to a rich man or conversely, or by a rich man to a wealthy man. Let us *more diligently inspect the valuation of the gift and the time of the donation, whether the thing given is of greater or lesser price, and whether it is conferred when necessity is pressing or at another time. When these things have been examined more studiously, we find nothing worthy of reproach in your aforesaid question, as will appear more manifestly to your solicitude in what follows*. Therefore, if by *right consideration* we weigh the person and quality of the

aforesaid cardinal and your brother, it was no great thing for one horse to be sent to the cardinal by the same brother of yours, which so great and abundant a man would perhaps give even to a jester who did not ask. But if we consider the necessity of the time, it is established that this was done with no intention other than that the cardinal be aided in the aforesaid circumstance. *Wherefore no scruple of doubt ought ever to arise in your conscience concerning this, since the thing given was of small price with respect to the person giving and the person receiving, and neither of them had anything in mind that could or ought to inflict any injury upon you, even in the least; although the horse was sent and bestowed, with necessity pressing, before the examination of the election and reception of the pallium, since it was done against your will and with you entirely ignorant; nor is the thing reputed of such value that it ought greatly to move the mind of the recipient or turn it from a purpose of honor toward something else.* But what is written, "Blessed is he who shakes his hands free from every gift," is said of those gifts that are accustomed to entice or pervert the mind of the recipient, since, even if the person elected himself should offer his ordainer or consecrator an electuary, *medicines*, or some of the *best* wine, or other things of this sort that are of small price and ought not to incline or move the will of the recipient, nevertheless the Roman Church is not accustomed to interpret the recipient or giver as offending in these things, [*unless these things intervened by agreement, etc.*]

Chapter XIX

Latin source headnote: If an abbot and the senior members of a convent received money by agreement for receiving a monk, they are suspended from office and benefice; money so received is restored, and the person so received is transferred to another monastery.

The same.

F., a priest, coming to us, proposed *in a simple report to us* that the abbot and brothers of Saint R. were unwilling to receive him as a monk until he agreed to give them thirty solidi *for the monastic state*. But after the agreement was made, *immediately* on the following day they clothed him in the monastic habit, and the same monks demanded thirty solidi, the abbot ten, and the household twelve for a meal, asserting this to be from the custom of the monastery. Therefore, because *the truth of the matter is not established to us and* a deed of this sort seems pernicious, we command *your fraternity by apostolic writings* that *you diligently inquire into the truth of the matter and*, if you find it to be so, you insistently admonish the abbot and monks to restore to the aforesaid F. the money so unworthily received, *and compel them with all severity*; and, suspending the abbot and the senior persons of the monastery from the exercise of office for the excess of so great a depravity, you shall command the said F. to endeavor to serve the Lord in the monastic habit in another monastery.

Chapter XX

Latin source headnote: If a person to be ordained gave something by agreement to the person presenting him, it is simoniacal; nevertheless, he is not deposed if it is occult.

The same.

From the letters of your fraternity and from the confession of the priest who bears the presents, we received that, when his archdeacon was unwilling otherwise to present him for the order of priesthood [*to be assumed*], he paid six solidi to the same *archdeacon*, and thus, *afterward*, having been presented by him, he received the order itself. Hence, *concerning that on which you sought our counsel*, we

considered that this response should be made to you: if this is not public but secret, you are secretly to approach the same priest, admonishing *him*, *yet* without any coercion, and earnestly inducing him to assume the order of some religious institute and perpetually abstain from the office that he [*thus*] illicitly acquired. *But if perhaps you cannot induce him to assume the order of a religious institute, you are to endeavor to establish some ecclesiastical benefice for his support, on the condition that he ought perpetually to abstain from the priesthood.* Otherwise, since his excess is secret, it will not be safe to coerce him unwillingly from the same office. Nevertheless, you shall not postpone imposing secret penance upon him according to what shall seem good to you.

Chapter XXI

Latin source headnote: It is brief and cannot be summarized more briefly.

The same.

Know that it has reached our *hearing—wherefore, if it is true, we greatly marvel and are rightly moved against you—that in the churches constituted in your jurisdiction you by no means permit vicars to minister unless money has been extorted from them, and that you presume each year to burden the persons of churches as though they were servants and tributaries with undue exactions, extorting from them money and procurations, calling them by various names, sometimes the bishop's aid, at times the same bishop's and your customs. If perhaps they oppose rendering these to you, you suspend the same persons and the vicars of the churches from office, and prohibit divine offices from being celebrated in their churches; and, among other things, you presume to extort from them coins for chrism according to your will, to the peril of your salvation, sometimes calling an exaction of this sort, so that you may seem to exact it more freely, an episcopal custom, sometimes synodals, and sometimes paschal coins.* (*And below:*) *But because it is not fitting for you to treat clerics so cheaply and dishonorably*, we command your discretion *by apostolic writings* that you by no means demand money *from them* for exercising ecclesiastical ministry, assigning vicars, or chrism, *and that you not presume hereafter to burden them with undue exactions or procurations, or to subject their persons or churches to interdict without manifest reason and a reasonable cause; otherwise, if a repeated complaint concerning this should at any time reach us, we will punish you gravely.*

Chapter XXII

Latin source headnote: Dispensation can be granted to one simoniacally ordained who is not himself a simoniac.

Lucius III.

Concerning persons *indeed* simoniacally ordained, we cannot give you a certain response *according to your petition* unless we know more fully how they were ordained, since some persons, although they are ordained simoniacally according to a certain appearance of simony—as, for example, when those *ordained* are ignorant of it—can *nevertheless* remain in their orders because they are not simoniacs.

Chapter XXIII

Latin source headnote: If one opposing the person elected ceases from opposition for money delivered with the will of the person elected, the person elected and afterward confirmed is a simoniac and is bound to renounce the benefice.

The same.

Cardinal Matthew showed us by a secret intimation that, when you had been elected to the government of your church by the will of the greater part of the brothers, *because*, with a few opposing you, *you were unable to enjoy due peace*, a certain friend of yours, with your knowledge and will, yet *disturbed*, paid a gift of a certain quantity to the person who seemed to be the master of the discord, and thus the opposition *which he had previously maintained* became quiet. But now you doubt that you are entirely immune from the stain of simony for as long as you wish to remain in the administration. Therefore, because *through the aforesaid cardinal you sought the counsel of the Apostolic See* as to what is to be done by you, we respond that you consult your own good greatly if you quickly and spontaneously resign the *aforesaid* administration, remaining mindful of that *evangelical* word: "It profits a man nothing if he gains the whole world but suffers detriment to his own soul."

Chapter XXIV

Latin source headnote: No price ought to be demanded for absolving an excommunicated person.

The same.

Know that it has reached our ears that, when C. of Seneville had been bound by the bond of excommunication because of money that he owed, he satisfied the creditors, but, with the excommunicators seeking ten pounds for absolution, he was unable to obtain the benefit of absolution. Therefore, because it is unworthy and contrary to ecclesiastical reason that the benefit of absolution be bought back, we command your discretion *by apostolic writings* that, if the aforesaid C. paid the debt *for which he had been named in the sentence*, you cause him to be absolved freely *by apostolic authority*, *notwithstanding any appeal*, if the excommunicators, after being requested, shall not have done it.

Chapter XXV

Latin source headnote: Monks received through simony, if they are simoniacs, are transferred to stricter monasteries; otherwise, after renunciation, they can be placed in the same monasteries or in other monasteries of the same order.

Clement III.

You wished to consult us concerning regular canons or monks who obtained entry through simony with their own knowledge *and contrivance*. Hence, since many express authorities are found concerning this, we respond nothing other than what has been established: that they altogether leave the place which they obtained in such a manner and go to solitary places or other stricter monasteries, in which they are to bewail so execrable an excess without interruption. But if the money was given without their knowledge, you shall compel them to renounce the same place, and afterward you can lead them back into it if they can remain there without scandal, or place them in another that is of the same order to serve God.

Chapter XXVI

Latin source headnote: If someone, renouncing a canonry to which he had been admitted simoniacally but in ignorance, is afterward admitted anew to it, he cannot claim anything for himself from the first reception.

The same.

From your intimation it became known to us that your father formerly acquired for you the benefice of a prebend through the intervention of money, and that when *afterward*, arriving at years of discretion, you received the sign of the Lord's cross, *having been led to penance concerning the excess*, you freely resigned the said prebend into the hands of the provost and brothers. But the same *provost and brothers*, taking pity upon you, elected you anew as their canon, in such a way, namely, that through this election you should obtain the last place in choir and in the other *places*. *But because you humbly asked of us whether you could recover your place according to the earlier reception, to you* we respond that, remaining content with the indulgence that your brothers are known mercifully to have shown you, you are to dare to claim nothing in that church by reason of the first reception.

Chapter XXVII

Latin source headnote: An election is to be quashed as simoniacal if money was promised to the electors on this account, although the person elected is ignorant, unless this was done in fraud of the person elected. This is what it says first. A bishop does not dispense with a person elected and rejected because of the vice of simony. This is what it says secondly. Abbas.

Celestine III.

It was intimated to us on your part *with great diligence* that, when four persons had been appointed by the chapter who ought to elect someone as plebanus, the friends of the person concerning whose election there was hope promised one or all of the electors that they would pay money, yet with the person who was afterward elected upon the intervention of a promise of this sort being ignorant of it. (*And below:*) Therefore, because you wished to consult us concerning this, we respond briefly to your consultation that, unless it *perhaps* were established that those who made such a promise maliciously did it fraudulently to the detriment of the person who was to be elected, although he himself was not aware of the promise, his election, as presumed through simoniacal depravity, is nevertheless entirely to be rejected. (*And below:* [*cf. c.* 25, *On the Right of Patronage III.* 38.]) Finally, concerning *this* which we found at the end of your consultation, we considered that this response should be made: someone elected as a *plebanus, or priest, or* prelate of any church and rejected, as was said, through simoniacal depravity cannot by law obtain any dispensation from his bishop. [*Given at the Lateran on the eighth day before the Ides of May.*]

Chapter XXVIII

Latin source headnote: One who gives money to a prelate so that the latter will not molest him in fact in his right recovers it if the prelate does not observe what was promised. This is what it says by adhering to the letter.

The same, to the Bishop of Lincoln and the Prior of Pontefract.

Our *beloved* son R., the provost, explained to us that, when the Archdeacon of York did not cease to afflict him with many burdens *and various injuries*, he promised to give him a certain quantity of money so that he would desist from injuring him; but after receiving the money, the said archdeacon *did not leave him in peace, as he promised, and* did not cease from molesting him concerning his dignities and benefices. And therefore we command your discretion *by apostolic writings* that, if the matter stands thus, you compel the archdeacon, *by our authority, appeal having been removed*, to restore what he received if it shall be established that he acted contrary to his promise, *and that you also more strictly*

prohibit the archdeacon on our behalf from presuming to molest the provost himself or his people while the suit is pending, and, if perhaps he does so, let it be corrected through your solicitude.

Chapter XXIX

Latin source headnote: Nothing ought to be demanded for the blessings of those marrying and the funeral rites of the dead.

Innocent III, to the Abbot of Joug-Dieu and the Prior of Silla.

The parishioners of Villefranche, *beloved sons*, sent their complaint to us that *Damasius*, their chaplain, less lawfully demands and extorts money from them for the funeral rites of the dead and the blessings of those marrying. *And if perhaps his cupidity has not been satisfied, he fraudulently opposes fictitious impediments to them, lest the bodies of the dead be able to be buried or the blessing of those marrying be celebrated. Therefore, because exactions of this sort oppose the institutions of the sacred canons*, we command your discretion *by apostolic writings* that you admonish the said chaplain to desist from so great a presumption and also make suitable satisfaction for the excess, *and more attentively and effectively induce him*, inflicting upon him the canonical penalty, *appeal having been removed*, if he is unwilling to obey *your admonitions*. [*Given, etc., on the second day before the Kalends of June,* 1198.]

Chapter XXX

Latin source headnote: If through accusation it is established that a monk was received simoniacally, the person received and the person receiving are deposed. But if through inquisition, the person received is thrust into a stricter monastery; a worthy penalty is imposed upon the person receiving and the senior persons, and meanwhile they are suspended from the exercise of sacred orders.

The same, to the Archbishop of Canterbury.

The beloved son *Master* A., your messenger, proposed on your behalf that, when, visiting the diocese of Canterbury *according to the custom of your predecessors, so that you might correct the things to be corrected and establish the things you should see ought to be established according to God*, you found simoniacal depravity to have sprouted in monasteries *and regular canonries* and religious places, in such a way that many in them were received for a price who ought rather to have been received freely—indeed, even invited to the observance of religion. You therefore doubt whether, because a multitude is found in the cause, something is to be taken away from severity, *or whether you ought to exercise the rigor of canonical discipline against such persons*. We *therefore* respond thus to your inquiry: if an accusation shall have been canonically instituted before you against those who have been stained by a taint of this sort, after the crime has been proved by judicial order, you shall exercise the vengeance of canonical severity both against those giving and those receiving. But if it shall have been established to you concerning this through inquisition alone, you shall remove from such places those who were received in them through simoniacal depravity and direct them to stricter monasteries to perform penance. But upon abbots and abbesses, priors, prelates of every kind, and their officials, you shall impose suitable penance, and, until they have performed it, suspend them from the exercise of sacred orders, enjoining upon your bishops that they endeavor to observe this form throughout their dioceses. Nevertheless, that which shall have been freely offered without assessment can be gratefully received.

Chapter XXXI

Latin source headnote: An abbot can except against witnesses who deposed against him concerning simony in a judgment of inquisition on the ground that they are enemies and conspirators; but he cannot oppose other exceptions of crimes.

The same, to the Prior of Saint Victor and Masters I. of Bologna and L. of Modena, Canons.

Although Eli the high priest was good in *himself*, nevertheless, because he did not effectively rebuke the excesses of his sons, he received the vengeance of divine punishment both in himself and in them when, his sons having been killed in battle, he himself fell from his seat and died with his neck broken. Therefore, a prelate ought to arise for the correction of the excesses of subjects the more diligently, the more damnably he would leave their offenses uncorrected. Against them—so that nothing be said of notorious excesses—although one can proceed in three ways, namely through accusation, denunciation, and inquisition, nevertheless diligent caution is to be applied in all, so that, just as lawful inscription ought to precede accusation, so charitable correction ought to precede denunciation, and clamorous intimation ought to precede inquisition. "I will descend," says the Lord, "and see whether they have fulfilled in deed the outcry that has come to me." For the outcry then reaches the prelate when the excesses of subjects are reported to him through public reputation or frequent intimation; and then he ought to descend and see, that is, send and inquire whether truth accompanies the outcry that has come. For according to the canonical sanctions, if anything concerning any cleric whatever shall reach the ears of the prelate that can justly offend him, he ought not readily to believe it, nor ought the unknown matter inflame him to vengeance; rather, the truth is diligently to be investigated before the elders of the church, so that, if the quality of the matter demands it, canonical severity may strike the fault of the delinquent—not as though the same person *himself* were accuser and judge, but so that, as reputation makes delation or outcry denounces, he may discharge the duty of his office, with this moderation always applied, that the form of the sentence too be dictated according to the form of the judgment. Therefore, when those things which were greatly dissonant from regular honor had frequently been intimated to us concerning the Abbot of Pomposa, and when the monks approached our presence, some among them denounced him to us concerning simony, perjury, dilapidation, and insufficiency. When the same abbot excepted against them that fraternal correction according to the evangelical rule had not preceded a denunciation of this sort, and the same monks steadfastly asserted that they had first employed correction of this sort, although the oaths of two monks had been offered to prove this, nevertheless, because they still did not cease to contend concerning it, we, stirred, as we said before, by frequent outcries, wished by virtue of our office to inquire into the aforesaid matters, binding *absolutely all* the monks who had approached either with him or against the *abbot himself* by the bond of an oath, so that they would set forth the full truth that they knew concerning the matters proposed. When their depositions, reduced to writing, had been published, they began to dispute concerning them in many ways. But because we learned both from the assertion of the monks and from the confession of the abbot himself that the same *abbot* had expended *entirely* no small sum of money left by his predecessor and had obligated the monastery for another, greater sum, we considered that he, as suspect concerning dilapidation *according to canonical and lawful sanctions on account of these and other presumptions*, ought to be suspended from the administration of the abbey. And because simony seemed to have been proved in many ways against the abbot himself *through witnesses*, he opposed many exceptions against the witnesses, concerning which there was much dispute *on each side*: some asserting that in the crime of simony, as

[*also*] in the crime of lèse-majesté, all persons indiscriminately, both infamous and criminal, were to be admitted not only to accuse but also to testify, since an accusation of simony proceeds after the likeness of a public crime and lèse-majesté, *with many laws and canons alleged concerning this*; others responding to the contrary that, although these two crimes are judged as though equal with respect to accusation, nevertheless they differ in many things, since *both* one penalty is inflicted for the one and another for the other, and a distinction is assuredly to be made between the persons of accusers and witnesses, since crimes are proved not through accusers but through witnesses, *with many reasons and arguments nevertheless brought forward concerning this*. But lest either the purity of innocence succumb confounded or simoniacal depravity escape unpunished, we, equity having been weighed, considered that *neither all the exceptions opposed against the witnesses were to be admitted, nor were all to be repelled, but* we admitted for proof only those opposed exceptions which, *perhaps* having been proved, would make it appear that the witnesses proceeded not from zeal for justice but from the tinder of malice, *namely conspiracies and capital enmities; but the other objections opposed, such as theft and adultery, we considered ought to be repelled because of the enormity of the simoniacal heresy, in comparison with which all crimes are reputed as virtually nothing, because even if they weakened the credibility of the witnesses in some respect, they nevertheless would not destroy it entirely, especially since it happened that other supporting proofs assisted.* [*Given at the Lateran on the fourth day before the Nones of December,* 1199.]

Chapter XXXII

Latin source headnote: This chapter is a gloss upon the preceding chapter. For it tends toward declaring whether and when criminal witnesses are admitted in the crime of simony, and in effect it says the same as the preceding chapter.

The same.

Through your letters you intimated to us that you doubt *greatly* concerning a certain decretal epistle which you assert was published by us concerning witnesses to be admitted against simoniacal depravity. Know therefore *without hesitation* that we by no means published that epistle which begins thus, "Although for abolishing," but we confess that we published another which begins thus, "Although Eli." For its understanding we believe a distinction must be made whether the person against whom proceedings concerning simoniacal depravity are brought is simply denounced or criminally accused, and whether proceedings are brought according to the rigor of law or according to the moderation of equity. Likewise, whether he is a regular who has already renounced the world or a secular who still exists in the world, and whether he is of an inferior grade or of a more excellent dignity. In addition, whether he was previously of clear reputation and good fame or gravely defamed and very suspect, and whether he can readily be punished or cannot be condemned without scandal. Moreover, whether the witnesses are honorable or criminal, and whether they have *already* been corrected for the crime or still persevere in the crime. Again, whether the crimes are the same or lesser, equal or greater, and whether the witnesses are believed to have deposed from zeal for justice or from the tinder of malice. Finally, whether the statements of the witnesses alone are brought forward to uncover simoniacal depravity or other supporting proofs also assist. All these things are to be distinguished for understanding that epistle, *as the diligent investigator can perceive from the course of the epistle itself*. That Abbot of Pomposa, who had long before renounced the world, was gravely defamed concerning simony, perjury, dilapidation, and insufficiency. And when simony seemed to have been proved in many ways [*against the abbot himself*] through monks who had sworn to bear testimony to

the truth, he opposed many exceptions against the witnesses—namely conspiracies *and* capital enmities, theft, and adultery—in order to remove them from testimony. But we, lest the purity of innocence succumb confounded or simoniacal depravity escape unpunished, admitted for proof only those exceptions through which, perhaps having been proved, it would be established that the witnesses proceeded not [*from*] zeal for justice but *from* the tinder of malice, such as conspiracies and capital enmities. But the other exceptions [*opposed*], such as theft and adultery, we considered ought to be repelled because of the enormity of the simoniacal heresy, in comparison with which the other crimes are reputed as virtually nothing, since, even if proved, they would weaken the credibility of the witnesses in some respect but would not entirely destroy it, with other supporting proofs assisting; especially since the witnesses had [*already*] been corrected for the crime. Therefore we considered that such persons ought in such a manner to be admitted against such a person, not according to the rigor of law but according to the moderation of equity, since the proceedings were not criminal, so that he would be deposed from order, but civil, so that he would be removed from administration as undeserving and harmful. And assuredly such prelates can be removed from administrations for lighter causes, *especially by the Supreme Pontiff, who has the power not only of judging but also of disposing*, as the approved custom of certain religious requires. Hence the aforesaid abbot, without awaiting a sentence, yielded for himself as though conscious of guilt.

Chapter XXXIII

Latin source headnote: It is not imputed to a confirmed person elected if, while he prohibited it, money was given for his confirmation.

The same, to the Abbot of Gembloux.

As you intimated *to us* by your letters, when you had been *nurtured from tender age* in the church of Gembloux and, *having become a monk there, in mature age* you were at length promoted to the government of the church of Floreffe; but afterward, the Abbot of Gembloux having been removed from their midst, that church which had previously had you *as* a son called you, *unaware and absent*, as its father *and pastor* through canonical election. And because the cathedral church of Liège lacked a pastor, *after you had delayed for some days in the church of Gembloux*, proceeding to the church of Cologne, which is your metropolis, you meanwhile ministered in the church of Gembloux by its authority. But after a bishop was instituted in the church of Liège, he, having been requested by you, was unwilling to confirm the election made concerning you, *alleging nothing other than that you had been translated from a lesser place to a greater*. But when you learned that these things were being done *to you* for the purpose of extorting money, under threat of anathema you prohibited any money from being offered for a deed of this sort. Yet some of the brothers, without consulting you and with you ignorant, acting contrary to the sentence of excommunication made by you, promised money and even paid it, *as was afterward reported to you*; and thus, having been invited by the bishop, you freely received institution from him, as you sought. *Concerning these matters, therefore, your discretion led you to consult us whether, on account of an unknown and prohibited promise, as was said before, the stain of sin is inflicted upon you; or whether, concerning the promise now known to you, you ought to do penance with the brothers who made it, since you were unwilling to adhere to simoniacal depravity, prepared to undergo labor for the flock of the Lord; or whether, although your conscience does not accuse you, you ought to abstain from the government received if we should decree it*. Although, according to the institutions of the sacred canons, even little children who obtained churches through money by the cupidity of their parents are bound to resign them, nevertheless,

because not to furnish consent and expressly to prohibit something are widely different, we considered that this response should be made: because, contrary to your prohibition and will—from which you afterward by no means departed—someone, with you entirely ignorant, promised and paid money, especially since he is joined to you by no consanguinity, we believe that nothing ought to be imputed to you as penalty or fault, unless *perhaps* afterward you consented to the promised money being paid or *even* to the money paid being returned; otherwise it would happen that the deed of someone preparing snares for an enemy would exist to the detriment of the person to whom it was entirely displeasing, and thus someone would report an advantage from his fraud. But it is established that those who gave the money or even received it are culpable to such an extent that, if their excess were manifest to the Church, which does not judge concerning occult things, they would be struck with canonical punishment. [*Given at the Lateran on the second day before the Ides of August,* 1199.]

Chapter XXXIV

Latin source headnote: If a cleric confers his goods upon a church under an agreement that he be received in it as a canon and retain them for himself as a prebend, simony is committed; it is otherwise if this is done without an agreement.

The same, to the Dean of Beauvais.

Your discretion led you to consult us *whether, if anyone offers certain things from his goods to some church, seeking that during his life it be lawful for him to hold those same goods in that church as a prebend, the goods ought to be received when offered in this manner, and whether the same cleric can be assumed as a canon of the same church without the vice of simony. We therefore* respond thus to your devotion: if any cleric gives or offers his goods with a condition or agreement so that he afterward retains them as a prebend and *so that* he is admitted as a canon, an offering or reception of this kind cannot occur without the vice of simony, since in such matters every compact or agreement ought to cease according to the canonical sanctions. But if purely and without any agreement or condition he offers *some of his goods,* humbly asking that he be admitted as a canon and *that* it be lawful for him to retain his goods as a prebend, and the clerics of the same church consent purely, a reception of this kind *without doubt* can take place without a scruple of simoniacal depravity. Although we considered that this response should be made because it is given to us to judge concerning manifest things alone, nevertheless, if the person who makes such a donation is led by the intention that through the temporal goods which he offers he may be able to obtain spiritual things, and if the clerics who admit him as a brother would not have admitted him unless they received temporal advantages, without doubt both he and they are judged culpable before the strict Judge, who is the searcher of hearts and knower of secrets. [*Given at Rome at Saint Peter's on the third day before the Nones of December, in the tenth year,* 1207.]

Chapter XXXV

Latin source headnote: No one ought to receive an order from one whom he believes to be simoniacal; but he can minister in those orders which he previously received from him.

The same, to the Prior of Canterbury.

Through your letters you intimated *to us* that, when B. had taken the monastic habit in a certain house of the Carthusian order, *the term of his probation having been completed,* he was ordained subdeacon

by the diocesan bishop; but afterward he learned from the report of certain persons that, *although the same* bishop *was otherwise an honorable man,* he nevertheless had many times committed the vice of simony. Because of this the same monk, *troubled by vehement grief,* fears to minister in the order received, being unwilling to be promoted by the same bishop to the higher orders. *Wherefore, since it is not lawful for him to leave the hermitage, and the aforesaid bishop does not permit him or anyone else of his diocese to be ordained by another bishop, you asked to be instructed by the Apostolic See what is to be done with the aforesaid monk regarding the order already received and the higher orders to be received.* We therefore respond that the same *monk* may safely minister in the order thus received; but let him not ascend against his conscience to the higher orders, lest perhaps he build unto Gehenna. Although, because he has had an excessively scrupulous conscience, he has fallen into a difficulty of this kind, he will certainly not escape it unless he lays aside his error.

Chapter XXXVI

Latin source headnote: Nothing ought to be demanded for chrism or the investiture of churches, nor does custom or a variation of the name excuse it.

The same, to the Archbishop of Canterbury.

To such an extent, at the demand of sins, has simoniacal depravity corrupted the hearts of certain persons, *that, to the destruction of canonical sanction and [in], as it were, mockery of divine judgment, panting after shameful gains and saying in their heart, "There is no God," they cloak simony beneath an honorable name, as though, when the name is changed, the guilt and punishment are transferred. But neither is God mocked, according to the Apostle, nor will such followers of Simon, even if perhaps they elude temporal punishment at present, escape everlasting punishment in the future, since neither will the respectability of the name cloak the malice of the crime, nor will a word be able to abolish the guilt.* Indeed, it has reached our hearing that, although formerly certain of your suffragans were accustomed, *contrary to the canonical sanctions,* to receive a fixed sum of money for chrism, not fearing the canonical penalty and desiring to elude your correction, they anticipate the time for making payment, receiving in the middle of Lent what they were accustomed to receive after Easter; and, so that they may disguise the reason for receiving it, they vary the name of the pennies, now calling the pennies which they first called chrismal and secondly paschal "the custom of mid-Lent." *Certain others, however, vary neither the time of payment nor the name of the things to be paid in any respect, imitating the old custom in all things.* But since he who receives the price before he confers the precious thing more expressly exhibits the appearance of a sale *than does he who has deferred the time for receiving the recompense by dissembling, and has dissembled by deferring it, although each is dangerous in such matters,* and since grace is to be conferred freely, *lest it happen that both the reality and the name of grace are forfeited,* we command *and strictly enjoin* your fraternity by apostolic writings that, *relying on our authority and your own,* you so correct the aforesaid excesses—restraining your suffragans and their officials, *after prior instruction, by ecclesiastical censure, with the obstacle of appeal removed,* from so unlawful an exaction—that *a complaint about this cannot henceforth be brought to us,* and the fault of others is not imputed to you as punishment for your negligence. *Supported by the same authority,* also take care to abolish from your province that depraved custom by which archdeacons demand that a mark of silver be given to them for the investiture of churches, while lesser deans demand a white cow or the payment of a fixed sum of money. [*Given at the Lateran on the sixth day before the Kalends of July,* 1199.]

Chapter XXXVII

Latin source headnote: One ordained subdeacon, who first promised his presenter that he would seek nothing from him, cannot minister in the order received or ascend to higher orders without a dispensation, even if he did not believe that he was sinning.

The same.

Through your letters you intimated to us that, when D., the bearer of the present letters, wished to be ordained subdeacon and did not have a certain title, he entreated a certain priest to present him to the title of his church. When the latter refused to do this, he firmly promised him in return that, if he presented him, he would never seek any portion in his church; and thus he was ordained upon his presentation, nor, *as he asserts*, did he understand that in this he had done anything unlawful. *Wherefore, when he afterward wished to be promoted to the diaconate, and the bishop admonished that no one who had been ordained through the intervention of some promise should come forward, the same man, remembering this promise, refrained from receiving the order of the diaconate, humbly confessing this to you and asking through you to be instructed whether he was guilty by reason of a promise of this kind and whether it was lawful for him to minister in the order of subdeacon received and to ascend to further orders; your fraternity considered that an oracle of the Apostolic See should be sought*. We *therefore* respond thus to your inquiry: unless dispensation is mercifully granted to him, he ought neither to ascend to higher *orders* nor, *according to the rigor of the canons*, to minister in the order received.

Chapter XXXVIII

Latin source headnote: It is simony to give money for obtaining a vicariate or another administration of spiritual or ecclesiastical things, and those giving and receiving are to be cast out from that church. This chapter says this in other words, although it is brief.

The same.

To consult. *(And below:)* Whoever shall have wished to obtain a vicariate or another administration of ecclesiastical things through money, buyers as well as sellers, are struck down with Simon *Magus*, and are justly excluded from that church in contempt of which they wished to give and receive money.

Chapter XXXIX

Latin source headnote: It is simoniacal to demand anything for the consecrations of bishops, blessings of abbots, and ordinations of clerics, nor does custom excuse it.

The same, in the general council.

As we have learned for certain, in very many places [*and*] by very many persons, as though by those selling doves in the temple, shameful and depraved exactions and extortions are made for the consecrations of bishops, blessings of abbots, and orders of clerics, and it has been assessed how much is to be paid to this or that person, and how much to another or yet another; and, to the accumulation of greater damnation, certain persons strive to defend cupidity and depravity of this kind through a custom observed for a long time. Therefore, desiring to abolish so great an abuse, we utterly reject a custom of this kind, which is rather to be called a corruption, firmly decreeing that for these things, whether to be conferred or already conferred, no one shall presume to demand or extort

anything under any pretext whatsoever; otherwise, both he who receives and he who gives a price of this kind, which is wholly condemned, shall be condemned with Gehazi and Simon.

Chapter XL

Latin source headnote: Religious received for a price are expelled from the monastery together with those receiving them, and are confined in stricter monasteries to do penance. But those received before this council were placed in other houses of the same order, unless their multitude prevents it, yet so that they renounce the first reception and are received anew.

The same, in the same council.

Since the simoniacal stain has so infected very many nuns that they scarcely receive any women as sisters without a price, wishing to cloak a vice of this kind under the pretext of poverty, we wholly prohibit this from being done henceforth, decreeing that whoever shall henceforth have committed such depravity, both the one receiving and the one received, whether she is a subject or a prelate, shall be expelled from her monastery without hope of restoration and confined in a place of stricter rule to do perpetual penance. Concerning those, however, who were received in this manner before this synodal statute, we considered that provision should be made thus: removed from the monasteries which they wrongly entered, they are to be placed in other houses of the same order. But if perhaps, because of their excessive multitude, they cannot conveniently be placed elsewhere, lest [*perhaps*] they wander damnably in the world, let them by dispensation be received anew in the same monasteries, their former places being changed and lower ones assigned. We decree that this is also to be observed with respect to monks or other regulars. But, lest they be able to excuse themselves through simplicity or ignorance, we command that the diocesan bishops cause this to be published each year throughout their dioceses.

Chapter XLI

Latin source headnote: Bishops ought to demand nothing in order to permit clerics to be instituted in churches subject to them, monks to make profession, or the dead to be buried; otherwise, what was exacted will be restored twofold.

The same, in the same council.

We have heard concerning certain bishops that, when the rectors of churches die, they subject the churches to interdict and do not permit others to be instituted in them until a fixed sum of money is paid to them. Moreover, when a knight or cleric enters a religious house or chooses burial among religious, even if he has left nothing to the religious house, they introduce difficulties and malicious obstructions until some gift touches their hands. Since, therefore, according to the Apostle, one must abstain not only from evil but *also* from every appearance of evil, we wholly prohibit exactions of this kind. But if anyone shall have been a transgressor, let him restore twofold what was exacted, faithfully to be converted to the use of the houses to whose detriment it was paid.

Chapter XLII

Latin source headnote: The sacraments are to be conferred freely; nevertheless, the ordinary compels laypersons to observe praiseworthy customs.

The same, in the same council.

It has reached the apostolic hearing by frequent report that certain clerics demand and extort money for the obsequies of the dead, the blessings of those marrying, and similar things, and, if perhaps their cupidity is not satisfied, they fraudulently oppose fictitious impediments. Conversely, certain laypersons, from the leaven of heretical depravity, strive under the pretext of canonical piety to break a praiseworthy custom toward holy church introduced by the pious devotion of the faithful. Therefore, concerning these things, we prohibit depraved exactions from being made and command pious customs to be observed, decreeing that ecclesiastical sacraments are to be conferred freely; but, the truth having been learned, those who maliciously strive to alter a praiseworthy custom are to be restrained by the bishop of the place.

Chapter XLIII

Latin source headnote: He prohibits Cistercian abbots from being solemnly installed, and sets out the form of obedience which they render to their bishops.

Honorius III, to all the Abbots and Brothers of the Cistercian order.

Lest foulness stain the church of God, *which Jesus Christ washed with his own blood*, lest the wrinkle of duplicity deform it, the filth of cupidity, which is the root of all evils, and the deformity of venality, as a wrinkle contracted under the pretext of custom, are to be utterly eliminated from it, so that the dispensation of the mysteries of God and the mysteries themselves, freely received, may be conferred with gratuitous charity, Gehazi-like depravity having been entirely abolished. How detestable and how dangerous it is to buy or sell these things can clearly be discerned from the fact that the Lord cast those selling and buying sheep and oxen out of the temple and overturned the seats of those selling and buying doves. In the expulsion of the sellers and buyers, indeed, detestation of the crime defiling both is expressed; and in the overturning of the seats it is shown to what punishment those who preside, selling the gifts of God and the ecclesiastical sacraments, are subject. Therefore, lest a crime of this kind, [*which*] makes equal those whom it defiles, be able in any way to infect prelates and subjects, we most strictly prohibit by apostolic authority that any archbishop or bishop, archdeacon or official of theirs, presume to demand or extort from anyone elected as abbot, for a blessing or installation or for receiving their profession, under the pretext of custom, any palfrey or anything else, by whatever name it may be designated. We also forbid you to furnish in this manner things exacted under a pretext of this kind, since one must abstain not only from evil but from every appearance of evil. Prohibiting also the solemnities of installation from being performed for abbots-elect of your order, we add that archbishops and bishops are to be content with that form of profession which is known to have been instituted from the origin of your order, which is as follows: "I, brother, an abbot of the Cistercian order, promise that I shall perpetually render to you, lord bishop, and to your successors canonically substituted, and to the Holy Apostolic See, with my order preserved, the subjection, reverence, and obedience established by the holy Fathers according to the Rule of Saint Benedict."

Chapter XLIV

Latin source headnote: A prebend and revenues are owed to one received as a canon, notwithstanding the custom that he did not observe the depraved custom of giving some temporal thing to the canons themselves.

Gregory IX, to the Prior of Saint Thomas of Ascoli.

James, a canon of Ascoli, has set forth that, although he was received as a canon and brother in the church of Teramo, the canons of the same church refuse to assign him a share of the revenues and a prebend, alleging a certain custom that they ought to have a dinner from a newly received canon. Wherefore, we command that, if it is so, you compel the said canons, with appeal removed, to provide for him in the revenues and prebend as for one of the others, notwithstanding such a custom.

Chapter XLV

Latin source headnote: If someone ordained another under a promise that provision would not be sought from him, the ordainer is suspended for three years from conferring orders, and the presenter likewise for three years from the exercise of orders; but the ordained person is perpetually suspended from the order, and dispensation with them is granted only through the Apostolic See.

The same.

If anyone shall have ordained or presented to an order another from whom he received a promise or oath that the latter would not trouble him concerning his provision, let them know that the ordainer is suspended from the conferral of orders, the presenter from the exercise of orders for three years, and the ordained person from the order thus received until they shall have merited to obtain dispensation concerning this through the Apostolic See.

Chapter XLVI

Latin source headnote: It contains two rulings, the second at "and to resignations." And because of the brevity and variety of the readings, it is not otherwise summarized.

The same.

Our mandate having been received that you dispense according to the constitution of the general council with monks who obtained a place in monasteries through simony by something being given *(And below:)* Briefly responding to your consultation, we say that the apostolic mandate extends also to abbots, and to resignations of spiritual and temporal things which are acquired in such a manner by no compact, but with an intention of mind anteceding on both sides; in which case it suffices for those at fault to make satisfaction to their Creator through penance alone, for they are not bound by reason of simony of this kind.

Title IV: That Prelates Are Not to Grant Their Deputed Powers or Churches Under an Annual Rent

Chapter I

Latin source headnote: He who gives money in order to exercise episcopal or spiritual jurisdiction is deprived of his office, and the one who thus confers it will no longer be able to confer it and will be canonically punished. This it says together with the following chapters.

Alexander III, in the Lateran Council.

Furthermore, since in certain regions some persons who are called deans are appointed for a price and exercise episcopal jurisdiction for a fixed sum of money, by the present decree we establish that

anyone who shall henceforth have presumed to do this is to be deprived of his office, and the bishop is to lose the power of conferring this office.

Chapter II

Latin source headnote: It is summarized above in the immediately preceding chapter.

The same, in the Council of Tours.

Since in certain regions some deans or archpriests are appointed for an annual price to exercise the functions of bishops or archdeacons and to determine ecclesiastical causes, which beyond doubt redounds to the burden of priests and the subversion of judgments, we [*most strictly*] prohibit this from being done any further. But if anyone shall henceforth have done it, let him be removed from the clergy *by our authority*. The bishop, moreover, who *in his diocese* shall have tolerated this and through his dissimulation permits ecclesiastical jurisdiction to be perverted, is to be struck by canonical severity.

Chapter III

Latin source headnote: The governance of a church ought not to be committed under an annual rent.

The same, in the same council.

Since a certain enormous custom has gained force in some places contrary to the institutions of the holy Fathers, namely, that priests are appointed to the governance of churches for an annual price, we prohibit by every means that this be done, because, while the priesthood is made venal for a recompense of this kind, no consideration is had for the reward of eternal recompense.

Chapter IV

Latin source headnote: The fruits of churches can be granted under an annual rent.

The same, to the Bishop of Exeter.

We received the complaint of Master G. that, although he had received the church of Chephalai from G., the parson of the same *church*, to be held for seven years at an annual rent, the latter presumed to take it away *from him* before he had held it for the space of one year, although *the same G.* had confirmed by pledged faith [*to him*] that until the appointed term he would inflict no molestation or burden upon him on this account. Therefore, *commanding by apostolic writings*, we command your fraternity that, if *you* find it to be so, *with appeal removed*, you strictly compel him to restore the aforesaid church to the said G. and, until the term established *between them*, permit him peacefully to possess it according to what they agreed between themselves.

Title V: On Masters, and That Nothing Is to Be Demanded for a License to Teach

Chapter I

Latin source headnote: A cathedral church ought to provide a benefice for a master who is to teach the clerics of the same church and other poor scholars freely; and one selling a license to teach, or forbidding a suitable person to teach, is deprived of his benefice.

From the Lateran Council.

Since the church of God, like a pious mother, is bound to provide for the needy *both in those things which look to the support of the body and in those which conduce to the advancement of souls*, lest the opportunity for reading and advancing be withdrawn from the poor who cannot be aided by the resources of their parents, through every cathedral church some suitable benefice is to be furnished to a master who is to teach the clerics of the same *church* and poor scholars freely, *whereby the necessity of the teacher may be relieved and a way to learning may lie open to the learners. It is also to be restored in other churches or monasteries if, in times past, anything in them was deputed to this purpose.* But for a license to teach no one shall *at all* demand a price, or under the cover of any custom seek anything from those who teach, nor, when a license has been sought, shall he forbid anyone suitable to teach. But anyone who shall have presumed to act contrary to this is to be made alien from an ecclesiastical benefice. For it seems *fitting* that he who, through cupidity of mind, strives to impede ecclesiastical advancement while selling a license to teach should not have the fruit of his labor in the church *of God*.

Chapter II

Latin source headnote: Nothing ought to be demanded or promised for a license to teach, and what was exacted ought to be restored and what was promised remitted; and, when an inferior prelate neglects to establish a master, the superior will supply this.

Alexander III, to the Bishop of Winchester.

You are *henceforth carefully* to prohibit that anything be demanded from *anyone* or even promised in your parish for a license to teach. But if anything shall afterward have been paid or promised, with appeal ceasing, cause what was promised to be remitted and what was paid to be restored, knowing that it is written: "Freely you have received; freely give." Indeed, if anyone, *by occasion of this prohibition*, shall have deferred establishing masters in suitable places, it is lawful for you, *by our grant, with every contradiction and* appeal set aside, to place prudent, honorable, and discreet men there over the instruction of others.

Chapter III

Latin source headnote: Money ought not to be demanded for a license to teach, even if custom allows this.

The same.

The more the Gallican church *shines forth in the knowledge and honorableness of greater personages, and more cautiously strives to avoid those things which appear to confound ecclesiastical honorableness*, the more we judge those worthy of severe censure who assume the name and dignity of master of schools *in your churches* and do not impart to ecclesiastical men a license to teach others without a fixed price. But since this depraved *and enormous* custom has proceeded from the root of cupidity and greatly confounds the comeliness of ecclesiastical honorableness, *you must provide and strive with the greatest care that this custom be* [*entirely*] *rooted out of your churches, since it is especially and particularly ascribed to you if anything worthy of praise or deserving of reproof is found in those churches. [We also, who, though unworthy, exercise the supreme power by the dispensation of the Creator's clemency, being unwilling to leave uncorrected the vice of such cupidity and rapacity, command your fraternity by apostolic writings]* that, this custom having been rooted out of your churches, you take care to prohibit this under threat of anathema, strictly commanding that,

whenever suitable and learned men wish to direct studies of letters, they be permitted to direct schools without any molestation or exaction, [*lest knowledge, which ought to be imparted to each person freely, henceforth appear to be exposed for a price.*] But if any shall have been transgressors of a prohibition or precept of this kind, despoil them *by our authority and yours* of their offices and dignities. *Moreover, if* [*this*] *you neglect to correct according to our mandate, we shall regard your negligence as grave and troublesome and shall be compelled to extend our hand to correct these things, so that, if they wish to persist in the purpose of this rapacity, they will not be able to do so.* [*Given at Tusculum on the thirteenth day before the Kalends of November.*]

Chapter IV

Latin source headnote: In every cathedral church, or another church sufficient in resources, one master ought to be chosen by the prelate with the chapter, to whom the revenues of one prebend ought to be assigned; but in a metropolitan church a theologian also ought to be chosen. And if it is not sufficient for a grammarian and a theologian, let it provide for the theologian himself from the revenues of its church and cause provision to be made for the grammarian in some church of its city or diocese.

Innocent III, in the general council.

Since, because of poverty, both the pursuit of reading and the opportunity of advancing are withdrawn from some, provision was made by a pious constitution in the Lateran Council that, through every cathedral church, some suitable benefice be furnished to a master who would instruct the clerics of the same church and other poor scholars freely, whereby both the necessity of the teacher would be relieved and a way to learning would lie open to the learners. But since in many churches this is by no means observed, we, strengthening the aforesaid statute, add that a suitable master is to be appointed not only in every cathedral church but also in others whose resources can suffice, to be chosen by the prelate with the chapter, or by the greater and sounder part of the chapter, who is to instruct freely, according to his ability, the clerics of those churches [*and of others*] in the faculty of grammar and other subjects. Indeed, a metropolitan church is nevertheless to have a theologian who is to teach priests and others in sacred scripture, and particularly to inform them in those things which are known to pertain to the care of souls. The revenues of one prebend are to be assigned by the chapter to each of the masters, and as much by the metropolitan to the theologian—not that he is made a canon on this account, but that he may receive those revenues for as long as he shall have persisted in teaching. But if perhaps the metropolitan church is burdened by the two, let it provide for the theologian according to the aforesaid manner, but cause provision to be made for the grammarian in another church of its city or diocese which is able to suffice.

Chapter V

Latin source headnote: Prelates and chapters are bound to send teachable scholars to the study of theology, who in their absence will receive in full for five years the revenues of their prebends and benefices. And if their own revenues do not suffice for the support of study, the prelate with the chapter ought to provide for them; but masters, for as long as they teach, receive in full the fruits of their benefices.

Honorius III.

Upon the watchtower [*of the Lord, although unworthy, having been constituted, while we contemplate with diligent and manifold attention the state of the universal church, we grieve and are deeply saddened that, although the regions are white unto a most abundant harvest and the laborers are very few, very many watchmen who are bound to guard the vineyard of the Lord sleep their sleep, and do not gather the excessively growing tares into bundles to be burned, although the enemy continually sows them over it. And since the suckling and the little child fail in the streets, there is scarcely anyone to break bread for the little ones or give the thirsty the water of saving wisdom to drink, because the knowledge of the Lord is scant upon the earth; for very many, like wanton sons, having received no small portion of the substance of Jesus Christ, procure for themselves from it empty and resounding husks which do not satisfy, and draw water with the bucket of the Samaritans from the well or torrent of the waters of the unbelievers, which do not relieve but provoke the thirst of a dropsical man. Such men indeed, abandoning the enclosed garden with which no stranger communicates, where there is a fountain, and the well of living waters, and digging for themselves cisterns which cannot hold water, as though finding no pastures, disdaining the manna while sighing after the vegetables and melons of Egypt, run to gainful sciences, setting their eyes to look down upon the earth. Therefore, in order that through forceful rebukes, as through a father's blows, erring sons, recalled to their mother's breasts, may be able like young eagles to fly to them more swiftly, and may wish and be able, without stumbling and more willingly, to run in the odor of the fragrant grace of Jesus Christ to draw living waters in joy from the fountains of the Savior, we desire to remove certain obstacles opposing this journey and to annex certain necessary things to those which were long ago issued by our predecessors for the propagation of the offspring of true life.*] *Since, therefore, from the individual provinces beautiful maidens and virgins ought to be sought by maidservants for King Ahasuerus, who is called blessedness, and brought to the citadel and walls of the city, and to receive through the hand of Hegai the adornment of women, namely the supports of necessary things*, we will and command that the statute [*issued*] in the general council concerning masters of theology to be appointed throughout the individual metropolitan sees be inviolably observed. *Moreover, establishing by the counsel of our brothers and commanding with strict precept*, because some could perhaps excuse themselves concerning this on account of the rarity of masters, we command that certain teachable persons be sent by the prelates and chapters of churches to the study of the profession of theology, who, when they shall have been taught, may shine like the splendor of the firmament in the church of God, from whom an abundance of learned men may afterward be had, who, like stars destined to remain for perpetual eternities, may be able to instruct very many unto justice. If their own ecclesiastical revenues do not suffice for them, let the aforesaid persons supply them with necessities. But those teaching in the theological faculty, while they teach in the schools, and those studying in it, for five years, are, by license of the Apostolic See, to receive in full the revenues of their prebends and benefices, notwithstanding any other custom or statute, since those laboring in the vineyard of the Lord ought not to be defrauded of their denarius. *We will this to be observed unshaken, firmly decreeing that transgressors be struck with due punishment.* [*Indeed, although etc.* (*cf. c.* 10, *That Clerics or Monks, III.* 50.) *Given at Viterbo on the seventh day before the Kalends of December, in the fourth year of our pontificate,* 1219.]

Title VI: On Jews, Saracens, and Their Servants

Chapter I

Latin source headnote: If a slave bought by a Jew for the purpose of commerce has become or desires to become a Christian, he is redeemed for twelve solidi.

From the Council of Mâcon.

With God as author, we decree in the present council that henceforth no Christian slave is to serve a Jew; but, twelve solidi having been given for any good slave, let any Christian have permission to redeem that *slave*, whether to freedom or to servitude. And if he desires to become a Christian and is not permitted, let the same be done, because it is impious to detain in the bonds of servitude to a blasphemer of Christ one whom Christ *the Lord* redeemed.

Chapter II

Latin source headnote: A Jew cannot have a Christian as a slave, but he can have him as an adscriptitious tenant.

Gregory, to the Bishop of Luni.

It has [*reached us by the report of many that Christian slaves are detained in servitude by Jews dwelling in the city of Luni. This matter appeared to us the more severe, the more active was the forbearance on the part of your fraternity. For it was fitting for you, in consideration of your office and with regard for the Christian religion, to leave no occasion whereby simple souls would serve Jewish superstition, not so much through persuasions as, in a certain manner, by right of power. Wherefore we exhort your fraternity, according to the course of most pious laws,*] that no Jew be permitted to retain a Christian slave in his dominion; but, if any are found among them, let liberty be preserved for them [*by the aid of protection under the sanction of the laws*]. Those, however, who are on their estates, although [*even*] *they* are free by the severity of the laws, nevertheless, because they have long adhered to the cultivation of their lands, owing by the condition of the place, are to remain to cultivate the fields, furnishing the customary payments to the aforesaid men. Let them also perform all the things which the laws command concerning coloni or persons bound by origin, and no [*further*] burden beyond this is to be imposed upon them. But if any of the Jews shall wish to transfer any one of these either to another place or retain him for another service, let him impute it to himself, who by his own rashness has condemned for himself the right over the tenant, and by the severity of the law the right of dominion. [*Therefore, in all these things we will that you apply yourself diligently, etc.*]

Chapter III

Latin source headnote: Jews can retain old synagogues; they cannot erect new ones.

The same, to the Bishop of Genoa.

Jews from the city [*coming here to you complained to us that Peter, who by the will of God was led from their superstition to the worship of the Christian faith, having joined to himself certain undisciplined men, on the day following his baptism—that is, on the Lord's Day in the very festivity of Easter—had occupied their synagogue situated at Cagliari without your consent and with grave scandal, and had placed there an image of the Mother of God and of our Lord, the venerable cross, and the white cloak with which he had been clothed when rising from the font. Concerning this matter there also came to us writings attesting these same things from our sons Eupaterius, glorious master of the soldiers, the magnificent and pious governor in the Lord, and other nobles of your city. They also added that this had been foreseen by you and that the aforesaid Peter had been forbidden to dare it. Learning this, we wholly praised you, because, as truly befitted a good priest, you willed that nothing be done from which there would be just reproof. But because*] *by the fact that you in no way involved yourselves* [*in*] *those things which were wickedly done, you demonstrated that what was done displeased you,* [*considering in this matter the intention and, more especially, the judgment of your will, we exhort you with these addresses that, the image and cross having*

been removed from there with the veneration which is fitting, you ought to restore what was violently taken away, because] just as a legal definition does not permit Jews to erect new synagogues, so [*also*] it permits them to have old ones without disturbance. [*Therefore, lest the aforesaid Peter or others, etc.*]

Chapter IV

Latin source headnote: On Good Friday Jews are not permitted to keep doors or windows open.

Alexander III.

Since concerning those matters *about which you wrote to us in your letters regarding the Jews we have no certain canon, by notification of the present letters we intimate to your fraternity that, your clergy having been convoked together*, you are generally to forbid, *by both our authority and your own*, that Jews have their doors or windows open on the day of the Parasceve, but are to keep them closed the whole day. *You are also to permit no Christian slaves to live with them, but generally proclaim to all that no Christian dare remain in their service, lest perhaps through association with them they be converted to the unbelief of Judaism.* [*But concerning the lands, etc.* (*cf. c.* 16, *On Tithes, III.* 30.)]

Chapter V

Latin source headnote: Christians who serve in the house of Jews, Saracens, or pagans ought to be excommunicated. And secular princes who presume to despoil baptized Jews of their goods ought to be excommunicated.

The same, from the Lateran Council.

Neither under the pretext of nursing their children, nor for service, nor for any other cause, are Jews or Saracens to be permitted to have Christian slaves in their houses. Those who shall have presumed to dwell with them are to be excommunicated. *(And below: cf. c.* 21, *On Witnesses, II.* 20.) If, moreover, any, by the inspiration of God, shall have been converted to the Christian faith, they are in no way to be excluded from their possessions, since those converted to the faith ought to be of a better condition than they were held before they received the faith. But if it shall have been done otherwise, we enjoin upon the princes or authorities of those places, under penalty of excommunication, that they cause the portion of their inheritance and of their goods to be exhibited to them in full.

Chapter VI

Latin source headnote: Christians carrying prohibited merchandise to the Saracens, or sailing in their ships, are to be excommunicated and deprived of their goods, and are made slaves of those who capture them.

The same, in the same council.

Savage cupidity has so occupied the minds of certain persons that those who glory in the Christian name carry to the Saracens arms, iron, and lashings for galleys, and become equal or even superior to them in malice when they furnish them arms and necessities for attacking Christians. There are also those who, for their cupidity, exercise command and the care of navigation in the galleys and piratical ships of the Saracens. We therefore decree that such persons, cut off from ecclesiastical communion and subjected *for their iniquity* to excommunication, are *also* to be punished by deprivation of their goods through Catholic princes [*of the world*] and consuls of cities, and are to become slaves of those

who capture them *if they are captured*. We also command that frequent and solemn excommunication be pronounced against them throughout the churches of maritime cities. *The excommunication also, etc.* (*cf. c.* 3, *On Ravishers, V.* 17.)

Chapter VII

Latin source headnote: Jews can restore old synagogues to their former state; they cannot erect them anew.

The same.

He consulted. *(And below:* [*cf. c.* 29, *On Appeals, II.* 28.]) You ought not to permit Jews *also* to construct new synagogues where they did not have *them*. But if old ones have fallen down or threaten ruin, it can be tolerated with equanimity that they rebuild them, but not that they raise them higher or make them larger or more costly than they are known to have been before; for they certainly ought to regard this as a great thing, that they are tolerated in their old synagogues and their observances.

Chapter VIII

Latin source headnote: Christians ought not to be in the domestic service of Jews.

The same.

Moreover, *by the authority of the present letters we command and enjoin that* you wholly forbid all Christians who are in your jurisdiction and, if necessary, compel them by ecclesiastical severity, not to expose *themselves* continually for any recompense to the service of Jews. Take care also to prohibit this to their midwives and nurses, lest they presume to nurse the infants of Jews in the houses of those same persons, because the customs of the Jews and ours agree in nothing, and they would easily incline the minds of the simple to their superstition and unbelief through continual association and constant familiarity, *at the instigation of the enemy of the human race*. [*Moreover, etc.; cf. c.* 7, *On Usury, V.* 19.]

Chapter IX

Latin source headnote: Jews are not to be baptized unwillingly, nor compelled to this, nor punished without judgment, nor despoiled of their goods, nor molested during their festivals; neither are their cemeteries to be violated or their bodies exhumed.

Clement III.

Just as Jews *ought not without permission to presume in their synagogues beyond what is permitted in the law, so they ought to sustain no prejudice in those things which have been granted to them. We therefore, although they prefer to remain in their hardness rather than know the words of the Prophets and the mysteries of their scriptures, and to have knowledge of the Christian faith and salvation, nevertheless, because they seek our defense and aid, following from the gentleness of Christian piety the footsteps of our predecessors of happy memory, the Roman Pontiffs Calixtus, Eugenius,* [*and Alexander,*] *admit their petitions and grant them the shield of our protection.* We *therefore* establish that no *Christian* compel unwilling or refusing Jews to come to baptism [*through violence*]. But if anyone shall have fled to Christians for the sake of the faith, after his will has been disclosed, let him be made a Christian without calumny; for he is not believed to have the faith of Christ who is compelled to come to Christian baptism not voluntarily but unwillingly. Also, no

Christian shall presume, without a judgment of the earthly authority, either to kill or wound any one of them, or to take away *from them* their monies, or to change the good customs which until now they have had [*in the region in which they live*]. Especially, during the celebration of their festivals, let no one in any way disturb them with cudgels or stones. Nor is anyone to demand coerced services from them, except *those* which they themselves were accustomed to perform in past time. In addition, opposing the depravity and avarice of evil men, we decree that no one dare mutilate or invade a cemetery of the Jews or dig up buried bodies under the pretext of money. But if anyone, the tenor of this decree having been learned, shall [*rashly*], which God forbid, have presumed to act contrary to it, let him suffer the peril of his honor and office or be struck with a sentence of excommunication, unless he shall have corrected his presumption by worthy satisfaction.

Chapter X

Latin source headnote: It sets forth two concessions for those who preach to pagans.

The same.

How praiseworthy it is. *(And below:)* Assenting to your petitions, brother bishop, we grant by apostolic authority to you and your companions, when you go out to preach the faith of Christ to pagans, that it is lawful for you, with moderation and thanksgiving, the character of the seasons being observed according to the canonical sanctions, to use those foods which are set before you by the unbelievers themselves. Moreover, we grant that whatever religious or clerics, suitable for announcing evangelical truth to the nations, having sought and obtained the license of their prelates, shall have wished to adhere to you, may by apostolic authority have the free faculty of carrying this out without any contradiction.

Chapter XI

Latin source headnote: It is lawful to go to Alexandria to redeem captives when the travelers swear that they will carry no aid or assistance beyond the matter of redemption. One carrying or sending prohibited merchandise even after a truce is excommunicated, and truces do not come under the designation of peace.

The same.

Your fraternity signified to us in what manner some of your citizens may be able to proceed to Alexandria to recover their fellow citizens who are held captive there. We judge that this can lawfully be done, provided that they carry nothing there with them in their merchandise or in another manner from which, excepting the matter of redemption, any advantage or assistance can come to the Saracens; and this they will first confirm before you by oath. Those also who, after a truce was made in the lands beyond the sea, went with commerce to Alexandria do not escape the bond of excommunication if they carried prohibited merchandise for the sake of gain, just as neither do those who, not going in their own persons, dispatched merchandise to them through messengers. Finally, as for those who swore that they would not go again into the land of the Saracens with merchandise unless there were peace between the Christians and them, and who came there after a truce was made, that condition concerning the existence of peace or a truce does not absolve them from the bond of excommunication.

Chapter XII

Latin source headnote: Those who have any commerce with Saracens during time of war, or furnish them assistance, are excommunicated.

The same.

What was formerly commanded. *(And below:)* Indeed, although this was strictly prohibited in the Lateran Council, nevertheless, *by the counsel of our brothers*, we subject to excommunication all those who henceforth shall have commerce with the Saracens or, by themselves or through others, by ships or by any other device whatsoever, shall have considered that any assistance in things or counsel is to be furnished to them for as long as war between us and them shall have endured. We therefore command *and strictly enjoin* your discretion that neither through yourselves, nor through your ships, nor in any other manner or by any device whatsoever are you to transmit to them merchandise, counsels, or other assistance, lest, if *perhaps* any, hardened in their malice, shall have presumed to act otherwise, they not only fall by the law itself into that excommunication, but *they also* incur the wrath of the living God.

Chapter XIII

Latin source headnote: Jews ought not to have Christian nurses or servants; commerce with Christians is forbidden to those acting contrary to this.

Innocent III, to the Archbishop of Sens and the Bishop of Paris.

Although Christian piety receives Jews, whom their own fault subjected to perpetual servitude *when they crucified the Lord whom their prophets foretold would come in the flesh for the redemption of Israel*, and sustains their cohabitation—*whom even the Saracens, because of their unbelief, although they persecute the Catholic faith and do not believe in the one crucified by them, are unable to sustain, but rather expelled from their territories, vehemently crying out against us because they are sustained by us who truly confess our Redeemer condemned by them to the gibbet of the cross*—nevertheless they ought not to be ungrateful to us so as to render insult to Christians for grace and contempt in return for familiarity; for, though mercifully admitted, as it were, into our familiarity, they render us that recompense which, according to a common proverb, a mouse in a purse, a snake in the bosom, and fire in the lap are accustomed to furnish to their hosts. We have learned, moreover, that Jews make Christian women nurses of their sons and—what it is not only shameful to say but even impious to think—when it happens on the day of the Lord's Resurrection that those women receive the body and blood of Jesus Christ, for three days before they nurse them the Jews cause their milk to be poured into the privy. They commit, in addition, other detestable and unheard-of things against the Catholic faith, on account of which it is to be feared by the faithful that they incur divine indignation when they permit them unworthily to perpetrate things which bring confusion upon our faith. *We therefore asked our dearest son in Christ, Philip, illustrious King of the French, and also commanded the noble man M., Duke of Burgundy, and the Countess of Troyes, that they so restrain the excesses of the Jews that they do not presume to raise the neck, subjected to the yoke of perpetual servitude, against reverence for the Christian faith.* We therefore strictly prohibit that henceforth they have Christian nurses or servants, lest the sons of the free woman serve the sons of the bondwoman; but, as servants rejected by the Lord, in whose death they wickedly conspired, let them at least through the effect of their deed recognize themselves as servants of those whom the death of Christ made free, while it made them servants. *Since they have now begun to gnaw in the manner*

of a mouse and to sting like a snake, it is to be feared that the fire harbored in the lap may consume what it has corroded. Wherefore, by apostolic writings we command your fraternity that you take care so diligently to admonish and effectively induce the aforesaid king and others to this on our behalf that the unbelieving Jews henceforth in no way grow insolent, but under servile fear always display the shame of their fault and revere the honor of the Christian faith. But if the *Jews* shall not dismiss their Christian nurses and servants, *supported by our authority*, strictly forbid all Christians under penalty of excommunication to dare to exercise any commerce with them. [*Given on the Ides of July,* 1205.]

Chapter XIV

Latin source headnote: A Jew who strikes a cleric is punished temporally; and, if he cannot in fact be punished, commerce with Christians is forbidden to him until he has made satisfaction to the person who suffered the injury.

The same.

You asked *to be instructed by the Apostolic See* how you ought to proceed against a Jew who laid violent hands upon a certain cleric. To this *we* briefly respond *to your fraternity* that, if the said Jew is subject to your jurisdiction, you are to punish him by a monetary or other temporal penalty, according to what is fitting, causing suitable satisfaction to be rendered to the injured person; otherwise, admonish and induce his lord to cause competent satisfaction to be made by him to the person suffering injury and to the church. But if his lord neglects *to* fulfill this, by ecclesiastical censure forbid all Christians to presume to exercise commerce with the Jew himself before he makes satisfaction. What follows, etc. *Thirdly, you asked, etc.* [*cf. c.* 21, *On Regulars, III.* 31. *Given at the Lateran on the seventh day before the Ides of June, in the fifteenth year of our pontificate,* 1212.]

Chapter XV

Latin source headnote: Jews and Saracens of both sexes ought in the lands of Christians to use dress by which they are distinguished from Christians, and on the day of the Lord's Passion they ought not to go forth in public or break out in insult to the Creator.

The same, in the general council.

In certain provinces diversity of dress distinguishes Jews or Saracens from Christians; but in some such confusion has grown up that they are distinguished by no difference. Whence it happens at times that, through error, Christians mingle with the women of Jews or Saracens, and Jews or Saracens with the women of Christians. Therefore, lest the excess of so damned a mingling be able to have a refuge of further excuse through the veil of an error of this kind, we establish that such persons of both sexes are to be publicly distinguished from other peoples by the character of their dress in every province of Christians and at every time, [*since this very thing is also read to have been enjoined upon them through Moses.*] But on the days of lamentation and of the Lord's Passion they are by no means to go forth in public, because, as we have learned, certain of them are not ashamed to go about more ornately on such days and do not fear to mock Christians who, exhibiting the memory of the most sacred Passion, display signs of lamentation. We most strictly forbid this: that they presume in any way to break out in insult to the Creator. And since we ought not to dissemble the reproach of him who blotted out our reproaches, we command that presumers of this kind be restrained by

secular princes with the application of condign censure, lest they presume in any way to blaspheme the one crucified for us.

Chapter XVI

Latin source headnote: One placing a Jew or pagan over public offices is corrected through a provincial council; and commerce with Christians is denied to the person placed over the office until he has relinquished the office and, according to the bishop's provision, restores to the use of poor Christians the things acquired from it.

The same, in the same council.

Since it is exceedingly absurd that a blasphemer of Christ exercise the force of power over Christians, we renew in this general council what the Council of Toledo providently established concerning this, on account of the audacity of transgressors, prohibiting Jews from being preferred to public offices, because under such a pretext they are exceedingly hostile to Christians. But if anyone shall have committed such an office to them, after prior admonition let him be restrained with fitting severity through the provincial council, which we command to be celebrated each year. To an official of this kind, however, association with Christians in commerce and other matters is to be denied until, according to the provision of the diocesan bishop, whatever he acquired from Christians by occasion of the office thus received is converted to the use of poor Christians, and he relinquishes with shame the office which he irreverently assumed. We extend this same provision to pagans.

Chapter XVII

Latin source headnote: The general council repeats the Lateran Council above, in the same title, at *Ita*, and adds the penalty of satisfaction to be rendered at the time of absolution.

The same, in the same council.

For the liberation of the Holy Land. *(And below:)* Moreover, we excommunicate and anathematize those false and impious Christians who carry arms, iron, and lashings for galleys to the Saracens against Christ himself and the Christian people; also those who sell them galleys or ships, and those who exercise the care of navigation in the piratical ships of the Saracens or furnish them any counsel or aid in engines or any other things to the detriment of the Holy Land. We decree that they are to be punished by deprivation of their goods and to be slaves of those who capture them, commanding that a sentence of this kind be publicly renewed throughout all maritime cities on Sundays and feast days. And the bosom of the church is not to be opened to such persons unless they shall have transmitted in aid of the Holy Land all that they received from so damned a commerce and as much again from their own goods, so that by an equal judgment they may be punished in that wherein they offended. But if perhaps they shall not be able to pay, let the guilt of such persons be otherwise so chastised that through their punishment others are forbidden the audacity of presuming similar things.

Chapter XVIII

Latin source headnote: Jews or pagans are not to be placed over public offices; and, if royal rights are sold to them, a Christian not suspected of wrongdoing is to be placed over their collection.

Gregory IX, to the Bishops of Astorga and Lugo.

From the special affection of charity which we bear toward the illustrious King of Portugal. *(And below:)* We command that you carefully induce the king himself not to place Jews over Christians in public offices, as is contained in the general council; and, if perhaps he shall have sold his revenues to Jews or pagans, let him then appoint a Christian not suspected of inflicting burdens upon clerics and churches, through whom the Jews or Saracens may collect the royal rights without injury to Christians.

Chapter XIX

Latin source headnote: It summarizes itself.

The same.

No Jew is permitted to buy a baptized person or one wishing to be baptized, or to retain him in his service. But if he shall have bought for the purpose of commerce one not yet converted to the faith, and the latter afterward becomes or desires to become a Christian, twelve solidi having been given for him, let him immediately be withdrawn from that Jew's service. But if within three months he shall not have exposed him for sale, or shall have bought him to serve himself, neither may he himself sell him nor may another dare to buy him; rather, no price having been given, let him be led to the rewards of liberty.

Title VII: On Heretics

Chapter I

Latin source headnote: He is an unbeliever who does not have certainty of faith, and an unbeliever is not to be believed to the prejudice of another.

Pope Stephen, to all Bishops.

One doubtful in faith is an unbeliever, nor are those who are ignorant of the faith of truth to be believed at all, [*and who do not lead a life of upright conduct, etc.*]

Chapter II

Latin source headnote: He is convicted of erring in faith who, when he can, does not recall others who err from their error.

Pope Leo.

He who, when he can, does not recall others from error demonstrates that he himself errs. [*Given on the twelfth day before the Kalends of August, Calepius and Ardabur being consuls, men of clarissimus rank,* 447.]

Chapter III

Latin source headnote: A persevering heretic is eternally damned; neither baptism, almsgiving, martyrdom, nor any other good whatsoever profits him so far as attaining eternal life is concerned.

Augustine, On the Catholic Faith.

Hold most firmly and doubt in no way that every heretic or schismatic, *although he gives many alms or even sheds blood for Christ*, will share with the devil and his angels in the burning of eternal fire unless,

before the end of *this* life, he shall have been incorporated into and reintegrated with the Catholic Church. *(And a little afterward:)* For *indeed*, to every man who does not hold the unity of the Catholic Church, neither baptism, nor almsgiving, however abundant, nor death undertaken for the name of Christ will be able to profit unto salvation.

Chapter IV

Latin source headnote: When an author is condemned, his writings, books, and works are condemned.

Gregory, to Anastasius of Antioch.

Of your fraternity. *(And below:)* [*Moreover, when your fraternity spoke concerning the preservation of the holy councils, it professed that it preserves the holy First Synod of Ephesus. But because, from the annotation of a heretical codex which was transmitted to me from the imperial city, I learned—through the fact that certain Catholic chapters had been censured together with heretical ones—that certain persons consider as the First Synod of Ephesus that which is related to have been composed formerly by heretics in the same city, it is altogether necessary that your charity seek the same synod at the holy churches of Alexandria and Antioch and discover how it is truly held; or, if it pleases you, we shall send from here what we have preserved from antiquity in the archives.*] *For that synod which was produced under the appearance of the First Synod of Ephesus asserts that certain chapters presented in it were approved, which are the teachings of Coelestius and Pelagius. And* since Coelestius and Pelagius were condemned in the Synod of Ephesus, how will those chapters whose authors are condemned be able to be received?

Chapter V

Latin source headnote: A bishop who institutes as heir a heretical relative, a stranger, or a pagan is proclaimed excommunicated even after death. This it says according to the common and truer understanding; and, so that it pertains to the title, it can be understood that from this he is presumed to be a heretic.

From the African Council.

If any bishop shall institute as heirs persons outside his kinship, or shall prefer heretics, even relatives, or pagans, let anathema be pronounced against him at least after death, and let his name in no way be recited among the priests of God. [*Nor can he be excused if he died intestate, etc.*]

Chapter VI

Latin source headnote: It speaks concerning the same matter as the preceding chapter, and what was said there concerning a bishop is extended to priests and other clerics.

From the same council.

To those who are not Catholic *Christians*, even if they are relatives, bishops or priests are to confer nothing *through donations of their property*. Finally, what has been said concerning bishops and priests ought to be understood concerning the remaining clerics *also*.

Chapter VII

Latin source headnote: Christ was true God and true man; one holding the opposite is a heretic and excommunicated.

Alexander III, to the Archbishop of Reims.

Since Christ is perfect God and perfect man, *it is astonishing with what rashness anyone dares to say that Christ is not something insofar as he is man. But lest so great an abuse be able to arise in the church of God or an error be introduced,* we command [*your fraternity*] *by apostolic writings* that, *the masters of Paris and Reims and of the other surrounding cities having been convoked, by our authority* you forbid under anathema that anyone henceforth dare to say that Christ is not something insofar as he is man, because, just as Christ is true God, so he is true man, subsisting of a rational soul and human flesh. [*Given at Vesta on the twelfth day before the Kalends of May,* 1177.]

Chapter VIII

Latin source headnote: Heretics, their receivers, and their supporters are excommunicated; and those dying in this sin ought not to be buried in the church cemetery, nor ought prayer to be made for them.

From the Lateran Council.

As blessed Leo says, *although ecclesiastical discipline, content with priestly judgment, avoids bloody punishments, nevertheless it is aided by the constitutions of Catholic princes, so that men often seek a saving remedy when they have feared that corporal punishment will come upon them. For this reason,* because in *Gascony, Albi, and* the regions of Toulouse *and other places*, the damnable perversity of the heretics whom some call Cathars, *others Publicans*, others Patarenes, and others by other names, has so gained strength *that they now exercise their wickedness not in secret, as elsewhere, but publicly manifest their error and draw the simple and infirm to their assent*, we decree that [*and*] they and their defenders and receivers are subject to anathema; and under anathema we prohibit anyone from presuming to keep or support them in his house or land, or to exercise commerce with them. But if anyone dies in this sin, neither under the cover of our privileges granted to whomsoever, nor under any other occasion, is [*any*] offering to be made for him, nor is he to receive burial among Christians. [*Concerning the Brabanters, etc.*]

Chapter IX

Latin source headnote: A heretic who believes or teaches wrongly concerning the sacraments of the Church is excommunicated; and, upon conviction, unless he corrects himself and abjures the error, if he is a cleric he is to be degraded and handed over to the secular court, by which a layperson also will be punished. The same penalty also applies to those suspected of heresy if they have not cleared themselves, and a hearing is entirely denied to those who relapse. Secular princes who are unwilling to swear to defend the Church against heretics are excommunicated, and their lands are placed under interdict; but their cities which resist are deprived of commerce with other cities and of episcopal dignity; and exempt persons are subject to the ordinaries in those things which are established against heretics.

Lucius III.

For abolishing *the depravity of diverse heresies which in modern times has begun to spring forth in very many parts of the world, ecclesiastical vigor ought to be aroused, so that, with the power of imperial fortitude supporting it, both the insolence of heretics may be crushed in the very attempts of its falsehood and the simplicity of Catholic truth, shining in holy Church, may demonstrate it everywhere as cleansed from every abomination of false dogmas. Therefore we, supported alike by the presence and vigor of our dearest son Frederick, illustrious Emperor of the Romans and ever Augustus, by the common counsel of our brothers, and also of other patriarchs, archbishops, and many princes who assembled from diverse parts of the empire, rise against those heretics, upon whom the profession of diverse falsehoods has imposed diverse names, by the general sanction of the present decree, and by apostolic authority condemn every heresy, by whatever name it may be designated, through the series of this constitution. First, therefore, we decree that the Cathars and Patarenes, and those who falsely claim for themselves the name Humiliati or Poor Men of Lyons, the Passagines, Josephines, and Arnoldists, are perpetually subject to anathema. And since certain persons, denying the power of piety under its appearance, as the Apostle says, claim for themselves the authority of preaching—although the same Apostle says, "How shall they preach unless they are sent?"—all who, either prohibited or not sent, without authority received from the Apostolic See or from the bishop of the place, shall have presumed to preach publicly or privately, and* all who do not fear to believe or teach otherwise concerning the sacrament of the body and blood of our Lord Jesus Christ, or concerning baptism, confession of sins, marriage, or the remaining ecclesiastical sacraments, than the sacrosanct Roman Church preaches and observes, and generally whomsoever the same Roman Church or the individual bishops throughout their dioceses, with the counsel of the clerics—or the clerics themselves while the see is vacant, with the counsel, if necessary, of neighboring bishops—shall have judged to be heretics, we bind with the *same* bond of perpetual anathema. *We decree that their receivers and defenders, and all alike who shall have afforded any patronage or favor to the aforesaid heretics in order to foster in them the depravity of heresy, whether they are called Consoled, Believers, Perfects, or by any superstitious names whatsoever, are subject to the like sentence. But because, at the demand of sins, it sometimes happens that the severity of ecclesiastical discipline is contemned by those who do not understand its power,* we nevertheless decree by the present ordinance that whoever shall manifestly have been detected in heresy, if he is a cleric or is disguised by the shadow of any religious state, is to be stripped of the prerogative of the entire ecclesiastical order and, thus despoiled *alike* of every ecclesiastical office and benefice, is to be left to the judgment of the secular authority to be punished by due censure, unless, immediately after detection of the error, he shall have spontaneously hastened back to the unity of the Catholic faith and consented publicly to abjure his error at the judgment of the bishop of the region and to render suitable satisfaction. But a layperson *whom the notorious or private guilt of any of the aforesaid plagues shall have tainted,* unless, as has been said, after abjuring the heresy and rendering satisfaction, he shall immediately have fled to the orthodox faith, is to be left to the judgment of the secular judge to receive due punishment according to the character of the crime. *(And below:)* But those who shall have been found notable by suspicion of the *Church* alone, unless at the judgment of the bishop, according to consideration of the suspicion and the character of the person, they shall have demonstrated their own innocence by suitable purgation, will be subject to the like sentence. We also decree that those who, after abjuration of the error, or after, as we have said, purging themselves by the examination of their own bishop, shall have been detected as having fallen back into the abjured heresy, are to be left to secular judgment without any hearing at all, *the goods of condemned clerics being applied, according to the lawful sanctions, to the churches which they served. Indeed, we decree that the aforesaid sentence of excommunication, to which we command all heretics to be subject, is to be renewed by all patriarchs,*

archbishops, and bishops on the principal feast days and whenever they shall have solemnities or any occasion, for the glory of God and the censure of heretical depravity; establishing by apostolic authority that, if anyone of the order of bishops shall have been found negligent or indolent in these matters, he is to be held suspended from episcopal dignity and administration for the space of three years. In addition, by episcopal counsel and the suggestion of the imperial summit and its princes, we have added that every archbishop or bishop, by himself, by his archdeacon, or by other honorable and suitable persons, is to go around, twice or once in the year, his own parish in which it shall be reported that heretics dwell; and there he is to compel three or more men of good testimony—or even, if it shall appear expedient, the entire neighborhood—to swear that, if anyone there knows heretics or persons celebrating secret conventicles, or persons differing from the common association of the faithful in life and morals, he will take care to indicate them to the bishop or archdeacon. The bishop or archdeacon is then to summon the accused to his presence; unless they shall have purged themselves from the charge brought against them at their judgment according to the custom of the country, or if, after purgation has been rendered, they shall have fallen back into their former unbelief, they are to be punished by the judgment of the bishops. But if any of them, rejecting an oath because of a damnable superstition, should perhaps be unwilling to swear, by that very fact they are to be judged heretics and struck with the penalties which have been named above. We further establish that counts, barons, rectors, and consuls of cities and other places, according to the admonition of *archbishops and* bishops, are to promise by an oath physically rendered that, *in all the aforesaid matters*, when they have been requested *concerning them*, they will faithfully and effectively aid the Church against heretics and their accomplices *and will strive* in good faith, according to their office and power, *to commit to execution both the ecclesiastical and imperial statutes concerning those things which we have stated*. But if they are unwilling to observe this, let them be despoiled of the honor which they hold and in no way be assumed to others, while they are nevertheless to be bound by excommunication and their lands placed under interdict of the Church. But a city which shall have considered that these *decretal* enactments are to be resisted, or which, contrary to the admonition of the bishop, shall have neglected to punish those resisting, is to be deprived of commerce with other cities and is to know that it is to be deprived of episcopal dignity. *We also decree that all supporters of heretics, as persons condemned to perpetual infamy, are to be repelled from advocacy, testimony, and other public offices.* But if there are any who, exempt from the law of diocesan jurisdiction, are subject to the authority of the Apostolic See alone, nevertheless in those things which have been established *above* against heretics, let them undergo the judgment of *archbishops or* bishops and obey them in this matter as delegates of the Apostolic See, notwithstanding the privileges of their liberty. [*Moreover, etc.* (*cf. c.* 23, *On the Right of Patronage, III.* 38.)]

Chapter X

Latin source headnote: The goods of heretics are confiscated and, in the lands of the Church, are applied to the treasury of the Church, and in the lands of the empire to the treasury of the secular judge; and this applies even if they have Catholic sons.

Innocent III.

The corruption of the world declining into old age *is savored not only by the corrupted elements, but is also attested by the most worthy of creatures, created in the image and likeness of the Creator and preferred by the privilege of dignity to the birds of heaven and beasts of the whole earth; and not only does it now decline as the world itself, as it were, fails, but it both infects and is infected with the rough rust of old age. For at the end most wretched man sins; he who could not persevere in paradise at the creation of himself and the world degenerates near the dissolution of himself and the globe; and, forgetful near the end of the ages of the price of his redemption, while he*

inserts himself into the diverse and vain knots of questions, he entangles himself in the snares of his own fraud and falls into the pit which he prepared. For behold, while the enemy man sows wicked seed over the Lord's harvest, the crops spring forth as tares, or rather are polluted; the wheat withers and vanishes into chaff; the moth in the flower and the foxes in the fruit strive to demolish the vineyard of the Lord. Indeed, under the New Testament a new offspring of Achan steals from the spoils of Jericho the golden tongue and the mantle, [and] the detestable offspring of Abiram, Dathan, and Korah wish with new censers to burn leavened incense upon new altars, while night declares knowledge to night, while the blind offers leadership to the blind, while heresies spring forth, and the heretic establishes as heir of his own heresy and damnation one whom he renders excluded from the divine inheritance. These are the tavern keepers who mix water with wine and offer the venom of the dragon in the golden cup of Babylon, having, according to the Apostle, an appearance of piety but utterly denying its power. Although diverse enactments have issued in the times of our predecessors against little foxes of this kind, indeed having diverse appearances but tails tied to one another because they agree in the same vanity, nevertheless the death-bearing plague could not yet be deadened to such a degree that, like a cancer, it did not creep further in secret and now pour forth openly the venom of its wickedness, while, cloaked by an appearance of religion, it both deceives many simple persons and seduces certain astute ones; he who was not a disciple of truth having become a master of error. Therefore, lest we, who, although around the eleventh hour, have been deputed by the evangelical householder among the laborers—indeed, more truly, over the laborers—of the vineyard of the Lord of Hosts, and to whom the sheep of Christ are committed by pastoral office, appear neither to capture the foxes demolishing the vineyard of the Lord nor to ward off the wolves from the sheep, and on this account may deservedly be called mute dogs unable to bark, and perish with the wicked husbandmen and be compared to the hireling, we considered that something more severe should be established against the defenders, receivers, supporters, and believers of heretics, so that those who cannot by themselves be recalled to the way of rectitude may nevertheless be confounded in their defenders, receivers, supporters, and even believers, and, when they see themselves avoided by all, may desire to be reconciled to the unity of all. Therefore, by the common counsel of our brothers and with the assent of the archbishops and bishops present at the Apostolic See, we most strictly prohibit anyone from presuming in any manner to receive or defend heretics, or in any way to favor or believe them, firmly establishing by the present decree that, if anyone shall have presumed to do any of these things, unless, admonished a first or second time, he takes care to cease from his presumption concerning this, he is made infamous by the law itself and is to be admitted neither to public offices or councils of cities, nor to electing others to such offices, nor to testimony. Let him also be incapable of making a will and not come to the succession of an inheritance. Moreover, no one is to be compelled to answer him concerning any business whatsoever. But if perhaps he is a judge, let his sentence obtain no force, nor are any causes to be brought to his hearing. If he is an advocate, let his patronage in no way be admitted. If a notary, let the instruments prepared by him be of no effect at all, but be condemned with their condemned author. We command the same to be observed in similar matters. But if he is a cleric, let him be deposed from every office and benefice, so that, where the guilt is greater, the vengeance exercised may be graver. But if anyone shall have contemned to avoid such persons after they have been denounced by the Church, let him know that he has incurred a sentence of anathema. But in lands subject to our temporal jurisdiction we establish that the goods of heretics are to be made public property, and in other lands we command the same to be done by secular authorities and princes, whom, if perhaps they shall have been negligent, we will and command to be compelled to execute this by ecclesiastical censure, with appeal removed. Nor are their goods thereafter to revert to them unless, when they return to their heart and renounce association with heretics, someone shall have wished to show mercy to them, so that at least temporal punishment may correct one whom spiritual discipline does not correct. For since, according to lawful sanctions, when those guilty of injured majesty are punished

capitally their goods are confiscated, with life alone preserved to their sons from mercy, how much more ought those who, erring in the faith of the Lord, offend Jesus Christ the Son of God to be cut off by ecclesiastical severity from our head, which is Christ, and despoiled of temporal goods, since it is far more grave to injure eternal than temporal majesty? Nor ought even the disinheritance of the orthodox sons in any way to impede the censure of severity of this kind under the pretext, as it were, of a certain compassion, since in many cases, even according to divine judgment, sons are punished temporally for their fathers, and according to the canonical sanctions vengeance is sometimes borne not only against the authors of crimes but also against the progeny of the condemned. [*We therefore decree, etc. Given at the Lateran on the eighth day before the Kalends of April, in the second year of our pontificate,* 1199.]

Chapter XI

Latin source headnote: Advocates or notaries who favor heretics or their defenders, or give patronage to those litigating under them and write instruments for them, are infamous and suspended from that office.

The same.

If the earth were to rise against us [*and the stars of heaven were to reveal your iniquities and manifest your crimes to the whole world, so that not only men but even the elements themselves conspired for your destruction and ruin and blotted you from the face of the earth, sparing neither sex nor age, so that you were an everlasting reproach to all nations, no sufficient or worthy vengeance could be taken upon you. For you neither fear God nor dread man, nor distinguish between profane and holy, but set light as darkness and darkness as light, and call evil good and good evil. You contemn the acquisition of a good reputation, which fattens the bones, and a good name, which is preferred to many riches, and care nothing for infamy, since you are of a worn forehead and have assumed the shameless forehead of a harlot. For you have rotted in sins like beasts in their dung, so that the smoke and dung of your corruption has now infected nearly all the surrounding regions and, as we believe, provoked the Lord himself to nausea. Indeed, in sins you surpass all, having become more unbelieving than Jews and more cruel than pagans. For the Jews once fastened the Lord to the gibbet of the cross; but you, continually crucifying the same one in his members, lacerate him with reproaches and insults. And although they believe, albeit under the blindness of sin, that God the Father founded all visible and invisible things, very many of you believe that visible things were founded and created by Lucifer. Pagans raged in destroying and slaughtering the bodies of Christians, but you intend to kill the whole man, secretly stealing the souls of the faithful from Christ and destroying both men alike. But neither these nor those knew the Lord's Christ, on account of which they appear to have some excuse in their sins; but you, like the sons of Ephraim drawing the bow, were signed with the character of Christ and still wish to be reckoned publicly by Christian profession, yet, departing backward in heart and receding from the faith, you have been turned into a crooked bow, entangled in the snares of heretics and deformed by their depraved dogmas. Whence the prophetic word has truly been fulfilled in you: "The lamias have bared their breasts; they have suckled their young." For you have been made drunk not with the wine of compunction but with the gall of the dragon offered to you by heretics in the golden cup of Babylon. For now the waters have overflowed, and sins, submerged in the abyss of vices, have covered your heads. Now the deep has swallowed you, and the mouth of the infernal pit presses upon you. Indeed, you have fallen into the lake of desperation, since you contemn to rise from the deep. Whence we deservedly fear lest the wrath of God come upon the sons of distrust, and he now sharpen his sword like lightning and cause the judgment of his hand to act concerning you, and on the day of fury not be mindful of his mercy. But we, having compassion upon your miseries, wish to meet your impending ruin and, if we can, to close the open way of your destruction, knocking*

upon God with prayers and imitating the footsteps of Abraham, who, when the Lord wished to overthrow Sodom and Gomorrah, obtained by multiplied intercessions that he would not destroy all for the sake of ten just men. Indeed, we wish to discover whether some faithful persons remain among you who have not taken care to bend their knees before Baal and who, prostrated in sackcloth and ashes after the example of the Ninevites, may soften the wrath and fury of the Lord, so that many may be spared for the sake of a few and all may not perish together. Therefore, if anyone is of God, let him join himself to us, for we wish to bear the sword of Phinehas, to imitate the censure of Moses, and with Mattathias to punish those sacrificing to demons, so that, with the Lord's aid, the unbelieving and unworthy may be eliminated from the temple and the leaven of heretical depravity be savingly purged from the mass of the Lord's dough. Therefore, by apostolic writings we command and strictly enjoin you that, since certain of your fellow citizens, sons of Belial, in hatred of Christ and contempt of the Apostolic See and of us, after the prohibition made by us, attempted to elect as consuls certain believers of the Patarenes, and did not fear to appoint as chamberlain even the heresiarch himself, namely I. Tiniosus, a son of perdition, who, at the demand of his iniquities, already long ago was bound by the bond of excommunication at our command and still persists in his contumacy, you rise manfully against the electors themselves and those elected, and likewise their accomplices, resisting them magnanimously and powerfully, sharply assailing them, and laboring to frustrate and blunt their first attempts so that they cannot be rooted with a firm root. But so that the trunk may wither and dry up completely when the roots have been torn out, under threat of anathema we most strictly prohibit anyone from presuming to swear to them as consuls or rectors or in any other manner. But those who are bound to them by any oath, or who presumed to swear to them after an election of this kind, since there ought to be no participation of Christ with Belial or of light with darkness, and a faithful man is in no way bound to keep faith with an apostate who rashly violated the faith of the Creator, since this is laid down in the canons, we have considered that they are to be absolved from such an oath.] *Although many things have been issued and established by us and our predecessors against heretics, and you have no excuse in your sins as though you had forgotten ancient mandates*, because what is specifically enjoined is customarily feared more than what is generally commanded, we firmly prohibit you advocates and scriniaries from furnishing *the aforesaid* heretics, *while they remain in their contumacy and error—Patarenes or* believers, their supporters or defenders, *at any time* with aid, counsel, or favor in anything; nor are you to furnish your patronage to them in causes or acts, or to any litigating under their examination, and in no way are you to attempt to *prepare* public instruments or make *any* writings for them. But if *perhaps* you shall have presumed to act *contrary* to this, we decree that, suspended from your office, you are subject to perpetual infamy. *Moreover, lest the judges and scriniaries who consented to be associated with the aforesaid electors in a rash presumption of this kind glory in their wickedness, since he who abuses the power permitted to him deserves to lose his privilege, we judge them to be suspended from their office, decreeing as invalid and void whatever shall have been done or established by them and by the aforesaid electors.* [*But the sentences, etc. Given, etc.,* 1205.]

Chapter XII

Latin source headnote: Laypersons are not to preach, hold secret conventicles, or censure priests.

The same, to all the faithful of Christ established both in the city of Metz and in its diocese.

Since from the office of the apostolate enjoined *upon us we have been made, according to the Apostle, debtors to the wise and the unwise, it is fitting for us to be solicitous for the salvation of all, so that we may both draw the wicked back from vices and foster the good in virtues. But there is need for greater discretion when vices secretly enter under the appearance of virtues and the angel of Satan feigns and transforms himself into an angel of light. Indeed, our venerable brother, the Bishop of Metz, signified to us through his letters that, both in the diocese and in the city*

of Metz, a multitude of laymen and women, drawn in a certain manner by no slight desire for the scriptures, caused the Gospels, the epistles of Paul, the Psalter, the Moralia, Job, and several other books to be translated for themselves into the Gallic tongue, applying themselves to a translation of this kind so willingly—would that also prudently—that in secret discussions laymen and women presume to belch forth such things among themselves and to preach to one another. They also spurn the company of those who do not involve themselves in like things and consider as strangers to themselves those who do not apply their ears and minds to such things. When certain of the parish priests wished to correct them concerning these things, they [*resisted them*] *to their face, attempting to introduce arguments from the scriptures that they ought not in any way to be prohibited from these things. Certain of them also disdain the simplicity of their priests and, when the word of salvation is proposed to them by those priests, murmur secretly that they have it better in their booklets and can express it more prudently themselves.* Although the desire to understand the divine scriptures, and the pursuit of exhorting according to them, is not to be censured but rather commended, nevertheless certain laypersons appear deservedly to be reproved in that they celebrate *such* secret conventicles *of their own*, usurp for themselves the office of preaching Christ, mock the simplicity of priests, and spurn the company of those who do not adhere to such things.

For God, the true light which illuminates every man coming into this world, so hates the works of darkness that, when he was about to send his Apostles into the whole world to preach the gospel to every creature, he commanded them, saying openly: "What I say to you in darkness, say in the light; and what you hear in the ear, preach upon the housetops," *manifestly announcing through this that evangelical preaching is not to be proposed in secret conventicles, as heretics do, but publicly in churches according to Catholic custom. For, according to the testimony of Truth, everyone who does evil hates the light and does not come to the light, lest his works be reproved. But he who does the truth comes to the light, so that his works may be manifested, because they were done in God. On account of this, when the high priest had questioned Jesus concerning his disciples and his doctrine, he responded: "I have spoken openly to the world; I have always taught in the synagogue and in the temple, in which all the Jews come together; and in secret I have spoken nothing." Moreover, if anyone objects that, according to the Lord's precept, what is holy is not to be given to dogs, nor are pearls to be cast before swine, since Christ himself said, not to all but to the Apostles alone, "To you it is given to know the mystery of the kingdom of God, but to the rest in parables," let him understand that the dogs and swine are not those who gratefully receive what is holy and willingly accept pearls, but those who tear apart what is holy and contemn pearls —such as those who do not venerate evangelical words and ecclesiastical sacraments as Catholics, but rather abominate them as heretics, always barking against them and blaspheming, whom Paul the Apostle teaches are to be avoided after a first and second admonition. But the secret mysteries of the faith are not to be expounded indiscriminately to all, since they cannot be understood indiscriminately by all, but only to those who can grasp them with a faithful understanding. On account of this the Apostle says to the more simple: "As to little ones in Christ, I gave you milk to drink, not meat"; for solid food belongs to the mature, as he himself said to others: "We speak wisdom among the perfect, but among you I judged myself to know nothing except Jesus Christ, and him crucified." For the profundity of divine scripture is so great that not only simple and unlettered persons but even the prudent and learned are not fully sufficient to investigate its understanding. On account of this scripture says, "Because many have failed while searching the scrutiny." Whence it was rightly established long ago in the divine law that the beast which touched the mountain was to be stoned, namely lest any simple and unlearned person presume to reach the sublimity of sacred scripture or even to preach to others. For it is written: "You shall not seek things higher than yourself." On account of this the Apostle says: "Not to be more wise than it is fitting to be wise, but to be wise unto sobriety."* For just as there are many members of the body but all *members* do not have the same

function, so there are many orders in the Church, but not all have the same office, because, according to the Apostle, "the Lord gave *some* as apostles, others as prophets, and others as teachers, etc." Therefore, since the order of teachers is, as it were, principal in the Church, no one ought indiscriminately to usurp for himself the office of preaching. For according to the Apostle, "How shall they preach unless they are sent?" and Truth itself commanded the Apostles: "Ask the Lord of the harvest that he send laborers into his harvest." But if perhaps someone astutely responds that such persons are invisibly sent by God, even if they are not visibly sent by man, since an invisible mission is much more worthy than a visible one and a divine mission far better than a human one—*whence John the Baptist is not read to have been sent by man but by God, as the Evangelist testifies: "There was a man sent by God whose name was John"*—it can *and certainly ought* reasonably to be answered that, since that interior mission is hidden, it does not suffice for anyone merely to assert that he himself is sent by God, since every heretic makes this assertion; rather, he must establish that invisible mission through the working of a miracle or through a special testimony of scripture. Whence, when the Lord wished to send Moses into Egypt to the children of Israel so that they would believe that he was sent by him, he gave him a sign: that he would turn his rod into a serpent and again reform the *serpent into* a rod. John the Baptist also brought forth from scripture a special testimony of his mission, saying *to the priests and Levites who had been sent to ask who he was and why he had assumed the office of baptizing*: "I am the voice of one crying in the wilderness: make straight the way of the Lord, as Isaiah the Prophet said." *Therefore, one who says that he is sent by God, when he has not been sent by man, is not to be believed unless he brings forth concerning himself a special testimony from the scriptures or works an evident miracle. For concerning those who are read to have been sent by God, the Evangelist also testifies that they went forth and preached everywhere, the Lord cooperating and confirming the word by the signs which followed.*

Although knowledge is very necessary to priests for teaching, because, according to the prophetic word, "the lips of the priest guard knowledge, and they seek the law from his mouth," nevertheless even simple priests are not to be disparaged by learned men, since the priestly office ought to be honored in them; on account of which the Lord commanded in the law: "You shall not disparage the gods," understanding by this the priests, who on account of the excellence of their order and the dignity of their office are designated by the name of gods. *According to which he says elsewhere concerning a servant wishing to remain with his master that the master is to offer him to the gods. For since, according to the word of the Apostle, a servant stands or falls to his own master, certainly a priest ought to be chastised in the spirit of meekness by the bishop to whose correction he is subject, but not to be reproved in the spirit of pride by the people over whose correction he is placed, since, according to the Lord's precept, father and mother ought not to be cursed but rather honored. This ought to be understood much more strongly concerning a spiritual father than a carnal one.* Nor should anyone defend the audacity of his presumption by that example in which an ass is read to have reproved the Prophet, or because the Lord says: "Which of you shall reprove me of sin? And if I have spoken badly, bear witness concerning the evil"; since it is one thing secretly to correct a brother sinning against oneself, which *certainly* everyone is bound to do according to the evangelical rule—in which case, indeed, it can be understood that Balaam was corrected by the ass—and it is another thing openly to reprove one's father *even when he is at fault, and especially to call him a fool for being simple*, which is certainly permitted to no one according to evangelical Truth: "For he who even says to his brother, 'Fool,' shall be guilty of the fire of Gehenna." Again, it is one thing for a prelate, confident of his own innocence, voluntarily to submit himself to the accusation of his subjects, in which case the aforesaid word of the Lord ought to be understood; and it is another for a subject to rise rashly

against a prelate, not so much with the intention of reproving as of disparaging him, when the necessity *of obeying* rather lies upon him. But if perhaps necessity should demand that a priest, as useless and unworthy, ought to be removed from the care of the flock, action is to be taken in an orderly manner before the bishop, to whose office both the institution and destitution of priests are known to pertain. *But that is to be spurned by all as proceeding from the arrogance of the Pharisees: that, as though they alone were just, they spurn the rest, since until now, from the beginning of the nascent Church, there have been many holy men who are read neither to have been such nor to have adhered to such persons, while persons of this kind are read to have newly arisen. Unless they are content to be taught rather than to teach, they will perhaps pertain to those to whom the Lord says: "Do not become many masters." Therefore, children, because we love you with paternal affection, lest under the pretext of truth you fall into the pit of error and under the appearance of virtues into the snare of vices, we earnestly ask, admonish, and exhort your whole body in the Lord, enjoining upon you for the remission of your sins that you recall your tongue and mind from those things which we have marked above as reprehensible, observing the Catholic faith and ecclesiastical rule, lest it happen that you are circumvented by fallacious words or even circumvent others. For unless you humbly and devoutly receive our correction and paternal admonition, after the oil we shall pour in the wine, applying ecclesiastical severity, so that those unwilling to obey voluntarily may learn to acquiesce even unwillingly.* [*Given at the Lateran,* 1199.]

Chapter XIII

Latin source headnote: All heretics, by whatever names they are named, are excommunicated. This it says as far as § *But those condemned*. — § 1. Those condemned for heresy are punished by the secular judge, and the goods of lay heretics are confiscated, while the goods of clerics are applied to the churches in which they were beneficed. This it says as far as § *But those who*. The Sicilian Abbot. — § 2. If one suspected of heresy does not purge himself, he is excommunicated at the judgment of the superior, and, remaining in excommunication for a year, is condemned as a heretic. This it says as far as § *But let them be admonished*. The Sicilian Abbot. — § 3. Secular authorities, perpetual or temporary, are bound to swear that to the extent of their powers they will exterminate all heretics condemned by the Church; and a temporal lord who does not purge his land of heretics is excommunicated. And if he persists in excommunication for a year, this is announced to the Pope, who will absolve his faithful from their oath and expose his land to the faithful, preserving the right of the principal lord unless he too is at fault. This it says as far as § *But Catholics*. The Sicilian Abbot. — § 4. Those signed with the cross for the extermination of heretics enjoy the privilege granted to those signed with the cross for the aid of the Holy Land. This it says as far as § *Believers*. The Abbot. — § 5. There the penalty for believers in, receivers of, and defenders of heretics is set down, first for laypersons and secondly for clerics, as far as § *Because*. The Abbot. — § 6. No one ought to assume for himself the office of preaching unless a license concerning this is granted to him by law, the Apostolic See, or the diocesan bishop; otherwise he is excommunicated, and, unless he comes to his senses, another penalty is imposed. This it says as far as § *We add*. The Abbot. — § 7. Archbishops and bishops who regard the provinces and dioceses of their inferiors as suspected of heresy are to visit them, at least once a year, by themselves or through other suitable persons. They also ought, if this appears expedient, to exact an oath from those of the neighborhood to reveal heretics and those celebrating secret conventicles; once revealed, relapsed persons are to be punished canonically, and those resisting the oath are to be condemned as heretics. This it says as far as § *We will*. The Abbot. — § 8.

A bishop negligent in pursuing heresy is to be removed from episcopal dignity and another suitable person substituted. This it says as far as the end. The Sicilian Abbot.

The same, in the general council.

We therefore excommunicate and anathematize every heresy raising itself against this holy, orthodox, and Catholic faith which we have expounded above, condemning all heretics, by whatever names they may be designated, indeed having diverse faces but tails tied to one another, because they agree in the same vanity.

§ 1. But those condemned are to be left to the secular authorities present or to their bailiffs, to be punished by due censure, clerics first having been degraded from their orders, so that the goods of those thus condemned, if they are laypersons, are confiscated; but if they are clerics, they are to be applied to the churches from which they received their stipends.

§ 2. But those who shall have been found notable by suspicion alone, unless, according to consideration of the suspicion and the character of the person, they shall have demonstrated their own innocence by suitable purgation, are to be struck with the sword of anathema and avoided by all until condign satisfaction, so that, if they shall have persisted in excommunication for a year, from then on they are to be condemned as heretics.

§ 3. But secular authorities, whatever offices they exercise, are to be admonished and induced—and, if necessary, compelled by ecclesiastical censure—so that, just as they desire to be reputed and held faithful, they publicly furnish an oath for the defense of the faith that from lands subject to their jurisdiction they will in good faith strive, to the extent of their powers, to exterminate all heretics denounced by the Church, so that henceforth, whenever anyone shall have been assumed into an authority, whether perpetual or temporary, he is bound to confirm this chapter by oath. But if a temporal lord, requested and admonished by the Church, shall have neglected to purge his land from [*this*] heretical foulness, let him be bound by the bond of excommunication by the metropolitan and the other bishops of the province; and, if he shall have contemned to make satisfaction, let this be signified within a year to the Supreme Pontiff, so that from then on he may declare the lord's vassals absolved from their fidelity to him and expose the land to occupation by Catholics, who, the heretics having been exterminated, may possess it without any contradiction and preserve it in purity of faith, saving the right of the principal lord, provided that he himself furnishes no obstacle concerning this and opposes no impediment, the same law nevertheless being observed concerning those who do not have principal lords.

§ 4. But Catholics who, having assumed the sign of the cross, shall have girded themselves for the extermination of heretics are to enjoy that indulgence and be fortified by that holy privilege which are granted to those proceeding to the aid of the Holy Land.

§ 5. Moreover, we decree that believers in, receivers of, defenders of, and supporters of heretics are subject to excommunication, firmly establishing that, after anyone of this kind shall have been marked by excommunication, if he shall have contemned to make satisfaction within a year, from then on he is made infamous by the law itself and is to be admitted neither to public offices or councils, nor to electing others to such offices, nor to testimony. Let him also be incapable of making a will, so that he neither has the free faculty of making a testament nor comes to the succession of an inheritance. Moreover, no one is to be compelled to answer him concerning any business whatsoever,

but he is to be compelled to answer others. But if perhaps he is a judge, let his sentence obtain no force, nor are any causes to be brought to his hearing. If he is an advocate, let his patronage in no way be admitted. If a notary, let the instruments prepared by him be of no effect, but be condemned with their condemned author. And we command the same to be observed in similar matters. But if he is a cleric, let him be deposed from every office and benefice, so that, where the guilt is greater, the vengeance exercised may be graver. But if any shall have contemned to avoid such persons after they have been denounced by the Church, let them be struck by a sentence of excommunication until suitable satisfaction. Indeed, clerics are not to exhibit ecclesiastical sacraments to pestilent persons of this kind, nor presume to deliver them to Christian burial, nor receive their alms or offerings; otherwise, let them be deprived of their office, to which they are never to be restored without a special indult of the Apostolic See. Similarly, any regulars whatsoever, upon whom this also is to be inflicted: that their privileges are not to be observed in that diocese in which they presumed to perpetrate such excesses.

§ 6. But because certain persons, denying the power of piety under its appearance, as the Apostle says, claim for themselves the authority of preaching, although the same Apostle says, "How shall they preach unless they are sent?", all who, either prohibited or not sent, without authority received from the Apostolic See or the Catholic bishop of the place, shall have presumed publicly or privately to usurp the office of preaching, are to be bound by the bond of excommunication and, unless they come to their senses as quickly as possible, struck with another suitable penalty.

§ 7. We add moreover that every archbishop or bishop, by himself, by his archdeacon, or by other honorable and suitable persons, is to go around, twice or at least once in the year, his own parish in which it shall be reported that heretics dwell; and there he is to compel three or more men of good testimony—or even, if it shall appear expedient, the entire neighborhood—to swear that, if anyone there knows any heretics, or persons celebrating secret conventicles, or persons differing from the common association of the faithful in life and morals, he will take care to indicate them to the bishop. But the bishop himself is to summon the accused to his presence; unless they shall have purged themselves from the charge brought against them, or if, after purgation has been rendered, they shall have fallen back into their former unbelief, they are to be punished canonically. But if any of them, rejecting the religious obligation of an oath with damnable obstinacy, should perhaps be unwilling to swear, by that very fact let them be reputed heretics.

§ 8. We therefore will and command, and strictly enjoin in virtue of obedience, that bishops diligently keep watch throughout their dioceses for the effective execution of these things if they wish to escape canonical punishment. For if any bishop shall have been negligent or remiss in purging from his diocese the leaven of heretical depravity, when this shall appear from certain indications, let him be deposed from the episcopal office and another suitable person, who wills and is able to confound heretical depravity, be substituted in his place.

Chapter XIV

Latin source headnote: Laypersons, of whatever profession they may be, ought not to preach.

Gregory IX, to the Archbishop of Milan.

Just as in one body. *(And below:)* Therefore, since certain laypersons presume to preach and it is greatly to be feared lest vices secretly enter under the appearance of virtues, we, considering that the

order of teachers is, as it were, principal in the church of God, command that, since the Lord gave some as apostles, others as prophets, and still others as teachers, you forbid all laypersons, of whatever order they may be designated, to usurp the office of preaching.

Chapter XV

Latin source headnote: This chapter, as far as § *But if any*, is contained in chapter *We excommunicate*, above in the same title, at the beginning; whence summarize and explain it as was stated there. — § 1. If those detected in heresy are unwilling to return to the faith, they are to be confined in perpetual prison to perform penance; and those believing the errors of heretics are heretics. This it says.

The same.

We excommunicate and anathematize all heretics—the Cathars, Patarenes, Poor Men of Lyons, Passagines, Josephines, Arnoldists, Speronists, and others, by whatever names they may be designated—indeed having diverse faces but tails tied to one another, because they agree in the same vanity. But those condemned by the Church are to be left to secular judgment to be punished by due censure, clerics first having been degraded from their orders.

§ 1. But if any of the aforesaid, after they shall have been detected, are unwilling to return to perform condign penance, let them be confined in perpetual prison; and we likewise judge those believing their errors to be heretics.

Chapter XVI

Latin source headnote: Those who were bound to heretics are freed from every obligation.

The same.

Let all who were bound by any compact, fortified by any firmness whatsoever, to persons manifestly fallen into heresy know themselves absolved from the debt of fidelity, homage, and every service.

Title VIII: On Schismatics and Those Ordained by Them

Chapter I

Latin source headnote: Ordinations, collations of benefices, and alienations of ecclesiastical things made by schismatics are invalid; and those who swear to maintain a schism are suspended from dignity and order.

From the Lateran Council.

Renewing what was done by our predecessor *Pope Innocent of happy memory*, we decree that ordinations made by the heresiarchs Octavian and Guido, *and also by John of Struma, who followed them*, and by those ordained by them, are invalid. We add *also* that those [*if any*] who received ecclesiastical dignities or benefices through the said schismatics are to lack the things obtained. Alienations also, *or invasions*, which were made concerning ecclesiastical things through the same schismatics, or *which* were made through laypersons, are to lack all force and revert to the churches without any burden. But if anyone shall have presumed to act contrary to this, let him know that he is subject to excommunication. We decree that those who voluntarily furnished an oath to maintain the schism remain suspended from sacred orders and dignities.

Chapter II

Latin source headnote: One ordained by a schismatic is to be repelled from office unless he proves that dispensation was granted to him by one having the power.

Innocent III, to the Archbishop of Besançon.

To your fraternity. (*And below:* [*cf. c.* 7, *On One Who Had Knowledge, IV.* 13.]) You will also be able without hesitation to repel from office the prior whom you assert was ordained by a schismatic, unless he shall lawfully have proved that merciful dispensation was granted to him by that person who had the power of dispensing concerning this. [*Given at Ferentino on the twelfth day before the Kalends of June,* 1203.]

Title IX: On Apostates and Those Repeating Baptism

Chapter I

Latin source headnote: A cleric who, having cast aside his habit and tonsure, involves himself in enormities loses the privilege of the canon *If anyone, at the devil's persuasion*; whence those who apprehend him do not fall under the canon, namely, the excommunication.

Alexander III.

Moreover, we do not command that clerics who, having abandoned the clerical order and their habit, live in apostasy as laypersons, if they are apprehended while involved in crimes, are to be freed by ecclesiastical censure. *For the statutes of the holy Fathers declare that such persons are to be numbered among apostates.* [*Concerning priests, etc.; cf. c.* 2, *That Clerics or Monks, III.* 50.]

Chapter II

Latin source headnote: If the crime of an acolyte who furnished ministry to one rebaptizing is hidden, he can be promoted; if public, he cannot, unless, when he enters religion, dispensation is granted to him.

The same, to the Abbot of Saint Geneviève.

From the tenor of your letters we have perceived that a certain man, exhausted by a long illness, believing the insane counsel of women who practiced sorcery, in order that he might be healed did injury to the sacrament of baptism through repetition. *But a certain youth of good character, as it appears—an acolyte and the natural brother of him in whom baptism is asserted to have been repeated—stood by at this sacrilege, furnished ministry in responding to the priest who baptized, and became a cooperator in the impious deed.* Therefore, because your prudence led you to consult us as to how the acolyte ought to be punished *or purged*, whom *also* his younger age and the intention of his brother's *bodily* salvation appear to excuse *somewhat*, by the present letters we respond to your discretion that, *although he does not appear to deserve to be struck with a severe penalty*, nevertheless, if what is proposed is public, he will not be able to be promoted to higher orders unless he shall have wished to pass to religion, so that by favor of the religious state dispensation may be granted to him. But if it is hidden, he can be promoted and expiate his excess with worthy fruits of penance.

Chapter III

Latin source headnote: One defamed concerning apostasy is compelled to purge himself.

Innocent III.

To your fraternity. *(And below:* [(*cf. c.* 3, *On Pilgrim Clerics, I.* 22.) *Others also, whom public report asserts to be monks or canons regular, proceeding in secular dress, falsely represent themselves as secular men though they are monks. Concerning them, since it cannot be proved that they professed the religious life, you sought an apostolic response whether they ought to be sent back to the regions on this side of the sea and, by letters of the bishops and abbots of those monasteries in which they are said to have assumed the regular habit, demonstrate that they are not monks or canons regular, or rather ought to be tolerated in secular dress. But we, etc.* (*cf. c.* 3, *On Pilgrim Clerics, I.* 22.)] Concerning the second article *however*, we have considered that response should be made to your inquiry that clerics who are defamed of the crime of apostasy—namely, those who cast aside the clerical habit—are not to be tolerated in secular dress, but are to be constrained by ecclesiastical severity until, when proof is lacking, they take care to furnish canonical purgation to abolish the infamy. [*You asked, etc. Given at Rome at Saint Peter's on the second day before the Kalends of February, in the ninth year,* 1207.]

Chapter IV

Latin source headnote: Baptized persons are compelled to abandon the rites of another sect or faith.

The same, in the general council.

Certain persons, as we have learned, who voluntarily approached the water of sacred baptism do not wholly put off the old man so that they may be more perfectly clothed with the new, since, retaining remnants of their former rite, they confound the comeliness of the Christian religion by such a mingling. But since cursed is the man who enters the land by two ways, and one ought not to be clothed in a garment woven of linen and wool, we establish that an observance of the old rite of this kind is to be restrained in every way by the prelates of churches, so that those whom the choice of free will offered to the Christian religion may be preserved in its observance by the necessity of saving compulsion, since it is a lesser evil not to know the way of the Lord than, after knowing it, to turn back.

Chapter V

Latin source headnote: Apostates can be imprisoned and afflicted so that they reassume the habit.

Honorius III, to the Archbishop of Tours.

Your fraternity sought to be instructed by us what is to be done concerning apostates when those who can in no way be induced by threats or blandishments to reassume the cast-off *monastic* habit are detained in custody. To this we respond briefly to you that, if you wish, you will be able to imprison such persons under severe custody, so that a miserable life alone is preserved for them, until they come to their senses from the wickedness of their presumption. [*Given at Rome on the second day before the Nones of May,* 1218.]

Chapter VI

Latin source headnote: A monk ordained while in apostasy cannot minister in the order received without a dispensation of the Pope.

The same, to the Archbishop of Lyon.

We respond briefly to your consultation that a monk receiving any sacred order while in apostasy, however much he shall have been reconciled to his abbot and received penance, nevertheless cannot minister in the order thus received without a dispensation of the Roman Pontiff. *To the inquiry, etc.* (*cf. c.* 7, *On the Use and Authority of the Pallium, I.* 8.) [*Given at Rieti on the fourth* (*third*) *day before the Ides of August,* 1225.]

Title X: On Those Who Killed Their Children

Chapter I

Latin source headnote: A woman who deliberately kills her son must do penance perpetually in a monastery; if, however, concern is felt about her incontinence, permission to marry is granted to her, or at least is not denied.

Alexander III, to the Bishop of Tournai.

M., the woman *bearing the present letters*, coming to us, showed us with a tearful confession that, when she had begotten a son by a certain man, and he had often reproached her with a swollen countenance that the son was not his, she, led by the heat of anger *and fury of mind*, killed that same son. *When this was discovered, the Count of Flanders compelled her to abjure the whole land for as long as seven years, unless she should remain by our permission. And when she had presented herself before us and had stated to us by her assertion that she had taken the cross, intending to set out for Jerusalem, we, recalling her from the journey to Jerusalem because in those parts her presence could not be useful but harmful, decided that she should be sent back to your fraternity, and by the authority of the present letters* We command that you laboriously induce that *woman* to pass into some monastery *of your episcopate*, in which she may lament her sins in perpetual penance. But if, because the weakness of the flesh resists, she is unwilling to be induced to this, you are to grant her permission to marry in the Lord, because it appears safer to us that she marry in the Lord *and* admit one man alone than dishonorably admit many.

Chapter II

Latin source headnote: A woman who kills her child must not on this account be separated from her husband; but another penance is to be imposed upon her.

Lucius III, to the Bishop of Paris.

We have understood *from your letters* that, *when* M., the woman *bearing the present letters*, *had* a little daughter, being inflamed by diabolical fury, *at length, at the suggestion of him who rejoices in the destruction of the faithful, she slaughtered her with a lethal wound*, on account of which the lord of the land compelled her husband and her to abjure the land. But because you have informed us that she has other children, *wherefore dispensation should be made concerning her exile, we, having complete confidence in your discretion, have decided that she should be committed to your prudence, and by apostolic writings* command that you make such provision in this matter that she may pay the penalty for her crime, that through your

providence counsel may be taken *in the Lord* for her salvation and that of *her* children, and that, notwithstanding the *alleged* oath which the said lord is alleged to have extorted from her husband, you restore her, as you shall see to be expedient, to the same husband [*of hers*] *and to her possessions*, so that she may govern her children freely and peacefully.

Chapter III

Latin source headnote: It is summarized by itself, laying down the penance of parents beside whom children are found crushed.

The same.

Concerning infants who are found dead with their father and mother, and it is not apparent whether the infant was crushed by the father or by the mother, or suffocated, or died by his own death, the parents ought not to be secure on that account, nor indeed without punishment; nevertheless, consideration ought to be given to age, where not will but the event was the cause of death. But if it is not hidden from them that they themselves are the killers, they ought to know that they have gravely transgressed, *as is proved by the Council of Ancyra*. Certain persons, moreover, judge that a penance of three years ought to be imposed, one of which they are to complete on bread and water.

Title XI: On Exposed Infants and the Sick

Sole Chapter

Latin source headnote: An infant exposed by his father, or by another with the father consenting or ratifying it, is by that very fact freed from paternal power. The same applies to a slave and a freedman, who for the aforesaid cause are freed from their master's power. And the same rule of law applies to the aforesaid sick persons of whatever age who are thus exposed, or if sustenance is denied to them; nevertheless, those who furnish the aforesaid persons with sustenance acquire no right in them.

Gregory IX.

If an infant has been exposed by his father, or by another while the father knew of it or ratified it, the duty of affection having been cast aside, he is by that very fact freed from paternal power. For also in this case a freedman is rescued into freeborn status, and a slave into freedom; and the same is to be said concerning the aforesaid sick persons of whatever age, if they have been exposed, or if it should happen that sustenance is impiously denied to any one of them. Certainly, those who take them in cannot on this account claim any right in their persons.

Title XII: On Voluntary or Accidental Homicide

Chapter I

Latin source headnote: An incorrigible killer must be deposed and delivered to the secular court, so that he may die.

In Exodus.

If anyone shall deliberately kill his neighbor and by ambush, you shall tear him away from my altar, so that he may die.

Chapter II

Latin source headnote: It lays down a penance for one who kills a robber when he could have freed himself otherwise; but if he could not free himself otherwise, he is not bound to do penance, except by way of precaution.

From the Roman Penitential.

You killed a thief or robber when he could have been apprehended without killing, *and nevertheless you killed him*. Because he was created in the image of God, *and was baptized in his name and redeemed by his blood,* for forty days you shall not enter *the* church, and, clothed in a woolen garment, you shall abstain for the aforesaid days from foods and drinks that are forbidden, and from the marriage-bed, *the* sword, and *from* riding. On the third and fifth weekdays and *on* the Sabbath, use some kind of pulses or vegetables, *and* fruit, and little fish with moderate beer, *and do so* temperately. But if without contemplation of hatred, in freeing yourself and your possessions, you killed members of the devil of this kind, I speak according to indulgence: on account of the image of God, if you wish to fast to some extent, it is good for you, and give alms abundantly. If a priest has done the same things, he is not to be deposed; nevertheless, for as long as he lives, he is to do penance.

Chapter III

Latin source headnote: A thief by day is not killed without fault, but a thief by night is.

Augustine, on Exodus.

"If [*however*] a thief shall be found breaking in, and shall have been struck and died, homicide is not to be imputed to the one who struck him. But if the sun should rise upon him, he shall be guilty [*and shall die by death*]." Therefore it is understood [*then*] that homicide does not pertain to him if a nocturnal thief is killed; but if he was a thief by day, that it does pertain to homicide. For this is what he says: "if the sun should rise upon him, etc.," because he could discern that the man had come to steal, not to kill, and therefore he ought not to be killed. This is also found in the ancient secular laws, than which this law is *nevertheless* more ancient: namely, that a nocturnal thief may be killed with impunity in any manner, but a thief by day only if he has defended himself [*with*] a weapon. For then he is more than a thief.

Chapter IV

Latin source headnote: What is unlawful does not fall under a general promise or permission, even one made under oath.

Jerome.

With an oath Herod promised to give the dancing girl whatever she should ask from him. If he should say that he had acted on account of his oath, would he have done it or not if she had asked for the destruction of his father or mother? What, therefore, he would have repudiated in his own kin he ought to have scorned [*also*] in the case of a prophet.

Chapter V

Latin source headnote: One who makes or gives sorceries or poisons causing sterility is a killer.

From the Council of Worms.

If anyone, for the sake of satisfying lust or in contemplation of hatred, shall make something for a man or woman, or give something to drink, so that the person cannot beget or conceive, or so that offspring cannot be born, let him be held as a killer.

Chapter VI

Latin source headnote: In imposing penance, a judge must attend to the circumstances by which the offense is increased or diminished. It says this as far as § *But Those*. — § 1. One who accompanies a killer with the intention of killing, although he does not lay hands upon the victim, is held to almost the same punishment as the killer if death nevertheless followed from his action. It says this as far as § *Those Also*. Abbas Siculus. — § 2. One who accompanies a killer only with the intention of preventing him from being hindered is held to a somewhat lesser punishment. It says this as far as § *But Those Who*. — § 3. One who incites another to homicide is punished more mildly than the killer; it is otherwise, however, if he incited him to a specific homicide. For, when that homicide follows, he is held as a killer. It says this as far as § *These Too*. — § 4. Those who guard the baggage of the killers, knowing that they are assassins, are not immune from the punishment for homicide. It says this as far as § *Those, Moreover*. Abbas. — § 5. One who seizes the goods of the person killed is not on this account held for homicide; and it is not sufficient for the one who seized them that he distribute them to the poor when he can restore them to those whose property they are established to have been. It says this as far as § *To Those, Furthermore*. Abbas. — § 6. Those who participate with the killers in excommunication are punished differently according to the manner of participation. It says this as far as § *The Clerics*. Abbas. — § 7. In this §, as far as the end, the penance of clerics who furnished assistance, counsel, or favor to the aforesaid death is laid down. It says this. Abbas Siculus.

Alexander III, to the Bishop of Exeter.

Just as it is fitting *and consonant with every principle of reason that grave and difficult questions be referred to the examination of the Apostolic See, so also it falls upon us by the ministry of the solicitude we have undertaken to resolve those same questions, as the Lord shall grant us, and to respond to each person seeking counsel from us, so that through the providence of the Roman Church, which by the Lord's ordering holds primacy everywhere on earth, questions may be resolved and ambiguity in these matters removed from the hearts of each. Although, moreover, we do not doubt that concerning the questions which your discretion directed to us to be resolved you are provident and circumspect, we are nevertheless constrained by the ministry of servitude to respond to you concerning them according to our discretion and providence.* Indeed, since you are a man *learned and wise and* discreet *and very much practiced in these matters*, you know more fully that, in the offenses of individuals, not only the quantity and quality of the offense, but also the age, knowledge, *and* sex and condition of the offender must be attended to, and that penance must be imposed upon each person not only according to the aforesaid matters but also according to the place and time in which the offense is committed, since, *as you yourself are not ignorant*, the same offense is to be punished more in one person than in another.

§ 1. But those who confess that, with the intention of killing, striking, or capturing that holy and venerable man, formerly Archbishop of Canterbury, they came without laying hands upon him, if his death had followed from that capture, would have to be punished by an equal or nearly equal penance.

§ 2. *And* those also who came not in order to strike but to render assistance to the assailants if perhaps they should be hindered by the violence of others ought to be chastised with a somewhat

lesser punishment, because, since it is written, "He who could have freed a man from death and did not free him killed him," it is established that [*they*] are not immune from the guilt of homicide who came to render assistance to the killers against others; nor is he free from the scruple of a secret association who, [*although he can,*] ceases to oppose a manifest crime.

§ 3. But those who assert that they inflamed the king's mind to hatred, from which *perhaps* the homicide followed, are to be punished [*sufficiently*] harshly and severely, but not so severely, unless perhaps by their suggestions they provoked the king himself to that homicide.

§ 4. These too are not free from fault, nor ought they to be immune from punishment, who, although they were ignorant of that *wicked* plot, nevertheless furnished service to those whom they knew to be assassins, *or* in guarding their baggage.

§ 5. Those, moreover, who are said to have seized the spoils of that holy man and his companions after his death, if they committed nothing else in so great a crime, we judge to be immune from the punishment for his death; but they are bound to restore in full the things they seized to those to whom they belonged, if they have the means from which they can return them. And a moderate penance is *nevertheless* to be imposed upon them for this, because, although they admit that they distributed to the poor certain of the things that they seized, they nevertheless ought not to have distributed to the poor the property of others when they could have restored it to those to whom it belonged.

§ 6. Furthermore, upon those who know themselves to be guilty solely by participation with excommunicated persons, a penance is to be imposed *according to this*: after consideration of the length of time for which they persisted in that wickedness, and after inquiry *also* whether they knowingly or unknowingly communicated with them through fear or affection.

§ 7. But we judge that the clerics who are established to have been present under arms at so great a crime, and *also those clerics* who gave *the* counsel that [*that same*] holy man should be captured, are to be deposed perpetually not only from the ministry of the altar, but *also in such a manner* that at no time whatsoever are [*they*] to read lessons in churches or sing responsories separately in the choir; rather, in psalms before God they are to strive to obtain pardon for what was committed. Furthermore, *those clerics themselves* are to be confined in the strict cloister of monks or canons regular, if this can be done, and *indeed* in such a manner that for as long as seven or five years they ought to be barred from entry into churches. [*Concerning that matter, however, etc.*]

Chapter VII

Latin source headnote: Accidental homicide is imputed to one who was engaged in a lawful act if he did not exercise the diligence that he ought to have exercised.

The same.

But a priest [*another priest*] who struck a certain boy on the head *and wounded him* for the purpose of discipline, when the boy died after a few days, *as you assert*, you ought both to remove perpetually from every ministry of the altar and to depose from the priestly office, if the boy died from that very blow, or contracted another illness from it by which he is known to have died.

Chapter VIII

Latin source headnote: Accidental homicide is imputed to one who was engaged in an unlawful act, or even in a lawful act, according to another interpretation, if he did not exercise all the diligence that he ought to have exercised.

The same, to the Archbishop of Cosenza.

It was contained in your letters that, when the deacon bearing the present letters and certain other clerics were returning from the church's vineyards after the work was finished, for the sake of lightening their labor they imitated a certain game of travelers, *throwing* their staffs *a long distance*. *For* they endeavored to throw straight ahead and to strike one another's staff. The condition of this game, *as they assert*, is customarily that the one who struck another's staff, as if the victor, would use the other man, *whose staff was struck*, as a horse; but the aforesaid clerics, not using the license to ride, were content with the throwing alone, *so that, while they ran more briskly to their staffs, they would not feel the labor of the journey*. But a certain layman, *as the aforesaid deacon asserts*, after he had struck that deacon's staff, incautiously leapt upon him to ride him, and thus received from the sickle with which that deacon was girded a mortal wound, from which he died after eight days. We therefore command that you not permit that deacon, without the permission of the Roman Pontiff, to ascend to a higher grade or ever to minister in the office of the diaconate, but that you allow him by dispensation to minister in the office of the subdiaconate.

Chapter IX

Latin source headnote: Accidental homicide is not imputed to one who was not at fault.

The same, to the Bishop of Exeter.

P., the cleric bearing the present letters, proposed to us *by word of mouth* that, when one day he happened to be playing with a certain cleric, it occurred that the latter threw him to the ground, and his knife, which he had at his side, entered the other man, who died wounded by the accidental event. We therefore command that, *when the truth of the matter has been ascertained*, if the matter so occurred and no other just cause impedes, you freely permit the aforesaid P. to be promoted to sacred orders.

Chapter X

Latin source headnote: One from whose unlawful conduct homicide follows is rendered irregular.

The same, to the Abbot of Saint Benedict of Vebia.

We received your letters, through which we learned that, while the bearer of the present letters remained with another brother in the custody of a certain house, certain robbers entering upon them at night presumed shamefully to afflict their persons and strip them of their own garments. Rising up against them after recovering their strength, these brothers bound them and wished to detain them until notice could be brought to the chapter. But when this man, intending to carry the matter to your hearing, had left them bound in the custody of his brother, and the thieves were striving to free themselves, the brother killed them lest he himself be killed by them. But because it was more expedient to leave even the cloak after the tunic and to sustain the loss of possessions than to become so violently inflamed against others for the preservation of cheap and transitory things, let

this man humbly abstain from the ministry of the altar, and let each strive to expiate his sin, *by such means as* he *can*, according to your judgment. For it is established that the men were killed through the action of both brothers, contrary to *regular* gentleness *and* ecclesiastical *discipline*.

Chapter XI

Latin source headnote: One who gives cause for a homicide is irregular.

The same, to the Bishop of Lucca.

For the rest, you should know that the deacon *whom you assert to be learned and endowed with uprightness*, who appears to have given cause for a homicide, *as we perceive from the tenor of your letters*, does not appear fit to be promoted to the priesthood.

Chapter XII

Latin source headnote: Accidental homicide is imputed to one who was engaged in a lawful act if he did not exercise the diligence that he ought to have exercised.

Clement III.

It came to the hearing of our apostolate [*from your part*] that, when a certain priest, wishing to correct a member of his household, attempted to beat him with *the* belt with which he was accustomed to be girded, it occurred that the knife, slipping from the sheath that adhered to the belt, wounded him slightly in the back. But afterward, when the wounded man had lived for some time and had *already* recovered from the wound, he was struck, as is said, by another, more serious illness, and *with a sound mind and due devotion* entered upon the way of all flesh. But because it is held doubtful whether he died by reason of the wound, *and that priest having been suspended from every office and benefice, you consulted the Apostolic See as to what was to be done by you concerning this matter. Now, therefore,* we have decided to respond to your discretion that, since in doubtful matters we ought to choose the safer path, it is fitting for you to enjoin upon the aforesaid priest that *henceforth* he not minister in sacred orders. Nevertheless, after a suitable penance has been imposed [*upon him*], you will be able to grant him permission to be content to *minister* in minor orders. But if *it shall lawfully be established to you that* the man died of another illness, *with your permission* he will be able to minister in divine offices as he was accustomed. [*Given at the Lateran.*]

Chapter XIII

Latin source headnote: Accidental homicide is not imputed to one who was engaged in a lawful act and was not at fault.

Innocent III, to the Bishop of Langres.

The beloved son A., a chaplain, *appearing in our presence, proposed to us in his confession* that, when he was burdened by a certain bodily illness *to such an extent that the desire both for food and for sleep appeared to have been taken from him*, in order that he might arouse his appetite for eating to some degree, he mounted a horse that he was keeping. Since it did not obey the reins well, but frolicked with *its* leaps contrary to the rider's will, he, in order to restrain its impetuosity, both pulled forcefully on the bridle and spurred the horse. And when the bridle broke, the horse, left *as if* to its own will, ran rapidly, and a certain woman, approaching *him* from the side *and carrying a little child*, met him. The horse rushed

upon her, its rider being thrown far away, and crushed the aforesaid child; *and the chaplain himself scarcely escaped the danger of death from the sudden accident, but, at last recovering, did not thereafter presume to celebrate divine offices*. Therefore, *because the aforesaid matters have not been established to us, by apostolic writings* we command your fraternity to *inquire more diligently into the truth concerning them, and*, if it is so, since the same chaplain perpetrated no homicide either by will or by act, nor was he engaged in an unlawful matter, you are not to prevent him from being able to celebrate divine offices. [*Given at the Lateran on the eighth day before the Ides of November,* 1200.]

Chapter XIV

Latin source headnote: It is summarized as in the preceding chapter.

The same, to the Bishop of Metz.

We learned from the letters of your fraternity that, when H., the priest *bearing the present letters*, wished to unload hay from a cart, he threw to the ground a pole resting upon it, *when he saw no one around the cart*, and, while he was engaged in unloading the hay, a certain man, *approaching near him*, found a certain boy half alive beside the cart, in whom nothing of an injury could be found except a little bruising on the forehead. We, moreover, asked the same priest whether, before he threw the pole, he had carefully looked around to see whether anyone was near the cart. He asserted that he had looked around diligently, but denied that he had seen anyone. Therefore, sending him back to you, *by apostolic writings* we command your fraternity that, if the matter so occurred, unless a grave scandal has arisen against that *priest*, or he labors under so great an ill repute that in the absence of an accuser it is necessary to impose canonical purgation upon him, you freely permit him to exercise the priestly office. [*Given at the Lateran on the eighth day before the Kalends of December, in the third year,* 1200.]

Chapter XV

Latin source headnote: It is likewise summarized as in the chapter *Beloved Son* above in this same title.

The same, to the Archbishop of Besançon.

We learned from the letters of your fraternity that a certain monk, *a boy of your diocese*, while assisting in taking down a bell from a bell tower, because a certain piece of timber *by accident* fell when he moved it, crushed and killed a certain boy in the church beneath the bell tower. *Wherefore you humbly asked us what should be done by you concerning this, petitioning that a merciful dispensation be granted to him.* Therefore, *by apostolic writings* we command your fraternity that, if the monk himself was doing a necessary and useful thing, and in a place through which he did not believe that anyone would pass, or be present there, or even customarily come there, when he is known to have moved the timber, he can suitably, especially in a monastery, be promoted to higher orders. [*Given at Rome at Saint Peter's on the Nones of April, in the ninth year,* 1206.]

Chapter XVI

Latin source headnote: It is summarized as in the chapter *Beloved Son* above in this same title.

The same, to the Bishop of Padua.

You informed us *through your letters* that, when the cleric F. was riding *with the archpriest of Saint Fidantius*, the horse on which he sat threw both itself and him into the water. Thereupon the cleric struck it heavily with his spurs. But the horse, *to use the words of your letters*, since it was hard in the mouth, broke into a run contrary to its rider's will, *and, poorly obeying the reins*, unexpectedly trampled to death a certain woman whom it met. And when we had caused inquiry to be made of the same cleric whether he had previously known the horse's vice, he asserted that he had not known it. Therefore, *by apostolic writings* we command your fraternity that *you inquire more diligently into the truth concerning these matters and*, if it is so, by way of *greater* precaution you impose a suitable penance upon that *cleric*, upon completion of which you are not to prevent him both from ministering in the orders he has received and from being able to be promoted to higher ones.

Chapter XVII

Latin source headnote: A person is not deemed a killer when, despite his prohibition and without his giving cause, a homicide is committed by his blood relatives.

The same.

Peter, a deacon and monk of Saint John of Puna, showed us by his statement that, when he was formerly *established* in the secular habit and held *a certain* benefice in the church of Rigelo, the abbot of that church deprived him of the same benefice. His relatives and friends *repeatedly entreated the abbot to restore the aforesaid benefice to him; and when the abbot was unwilling to acquiesce in their entreaties*, being very angry and agitated, they assembled one night in the deacon's house, and after supper they said that they wished to take vengeance upon the abbot. Although they were expressly forbidden by that deacon to kill the abbot or do anything to him whereby he might incur danger to his order and loss to his soul, nevertheless they rushed upon him, and, after inflicting blows, departed, leaving him half alive; he died after several days. *But from that time until today the aforesaid deacon, having become sorrowful on account of what had occurred, ceased from administration, and, before two years had elapsed, put on the monastic habit. Wherefore he petitioned us humbly to be instructed whether he could minister in the office of deacon and, if this were permitted to him, whether he could be promoted to a higher order. Although, if the truth supports the foregoing, the aforesaid deacon does not appear culpable for the abbot's death, nevertheless, because it belongs to good minds to acknowledge fault where there is no fault, we ascribe it not to him as a sin, but reckon it as merit, that by his own will he suspended himself from the administration of his office or put on the regular habit.* Therefore, *by apostolic writings* we command your fraternity that, if you know the foregoing to be supported by the truth, by apostolic authority you grant the often-mentioned deacon free faculty not only to minister in the office of the diaconate but also to ascend to the order of priesthood, if no other canonical impediment stands in the way, especially if he has not been stained by ill repute concerning this; since there ought not to be imputed to him what, contrary to his express prohibition and without his giving cause or occasion, was sacrilegiously attempted by his blood relatives, [*divine scripture testifying that the soul that shall sin shall itself die, etc. Given at Rieti on the fourth day before the Nones of August, in the first year of our pontificate,* 1198.]

Chapter XVIII

Latin source headnote: One who struck another lethally is deemed irregular, although the man was killed by others; the same applies if it is not apparent whether he struck lethally, if the man also died after being struck by others and it is not apparent from whose wound he died. It is the same if he

struck nonlethally but had the intention of killing, and the man died from the wounds of others. It says this notably. Abbas.

The same, to the Abbot of the Holy Trinity of Meldemberg.

You informed us *through your letters* that, when a certain evildoer, having entered the church *of Bleiseium, with the fear of God set aside*, carried the eucharist together with altar ornaments and ecclesiastical books outside [*that*] church, the beloved son L., the priest *bearing the present letters*, a canon regular of [*your*] church, *whom you had instituted chaplain in the aforesaid church of Bleiseium*, took up a mattock and struck the aforesaid son of wickedness. But both you and he are wholly ignorant whether a blow of this kind was unto death. When the parishioners of the church saw the man carrying away the ornaments of the church, they took up swords and clubs and immediately killed him in that same place. *But the aforesaid Laurence, taking forethought for his salvation, after a year had passed revealed to you the sequence of the matter under the title of confession, on whose behalf you humbly petitioned us that we deign to act mercifully with him. Although it is contained in the canon that, if four or five men or more shall have fought against one man, and he, having been wounded by them, shall have died, whoever among them inflicted even a wound is judged a killer according to the statutes of the canons; nevertheless, in another canon it is said concerning a priest who struck a deacon riding on horseback, and the latter, falling from the horse with a broken neck, died: that if he was not struck unto death, penance is to be imposed upon the priest who acted incautiously, in such a manner that, having been suspended for some time from the solemnities of masses, he may afterward return to the priestly office; but if the deacon truly died from any blow of the priest, the latter is by no reason to be permitted to minister here in the manner of a priest, even if he had no intention of killing.*

We believe that in the aforesaid case a distinction must be made whether it can be established that the aforesaid priest did not inflict a lethal blow from which, *that is*, if the wounds of the others had not followed, the man struck would by no means have died, and whether the striker had no intention of killing, and the others did not proceed against the man through his exertion, counsel, or command. And indeed, if the matter so occurred—which perhaps could be shown from this, if a certain blow inflicted by him should appear to have been so slight and so light, in a part of the body in which one is not customarily killed by being lightly struck, that in the judgment of skilled physicians such a blow would be asserted not to have been lethal—since concerning the remaining matters the *priest* himself is to be believed, who is accused or denounced by no one, but of his own accord, *being solicitous for his salvation*, seeks saving counsel, after a penance imposed by way of precaution he will be able to minister in the priestly office, especially with the favor of religious life being added, since he is a canon regular and can celebrate the priestly office without any scandal. But if it cannot be discerned from whose blow the man struck died, in this doubt the priest must be treated as a killer, although perhaps he is not a killer, and he ought to abstain from the priestly office, since in this case it is safer to cease than rashly to celebrate, for the reason that in the one course no danger, but in the other great danger, is feared. *Whether, moreover, a similar judgment is to be made concerning those of whom one, but it is entirely unknown which, perpetrated a homicide, if perhaps they should be presented to receive sacred orders—whether all are equally to be repelled, since it cannot be discerned who ought to be judged culpable—the diligent investigator should consider, although this case is very different from that one.*

But if, as is reported, this priest, having first been struck by that sacrilegious man, immediately struck him back on the head with a mattock, although all laws and every legal system permit force to be repelled by force, nevertheless, because this ought to be done with the moderation of blameless

defense, not for taking vengeance but for repelling injury, the same priest does not appear to be wholly excused from the penalty for homicide: both by reason of the instrument with which he struck, which, since it is heavy, is not accustomed to inflict a light wound, and by reason of the part in which that man was struck, in which one is customarily mortally injured by a slight blow; *especially since it is asserted according to the common proverb that he who strikes first strikes by touching, while he who strikes second strikes in pain. Wherefore, after everything has been weighed, it is believed expedient for him humbly to abstain from exercising the priestly office.* [*Given at Viterbo on the Kalends of July, in the twelfth year of our pontificate,* 1209.]

Chapter XIX

Latin source headnote: A religious who practices surgery, if death follows from it, is irregular, even if he is skilled and diligent and did this from a motive of piety; but after satisfaction a merciful dispensation can be granted to him. It says this as far as § *Lastly*. — § 1. One who gave to a secular judge identifying objects belonging to a thief by whom he had been wounded is not irregular, although the thief is afterward killed. Abbas Siculus.

The same.

Your fraternity led us to be consulted. (*And below:* [*cf. c.* 7, *On Consanguinity and Affinity, IV.* 14.]) *Third,* you asked *that it be explained through the Apostolic See* what ought to be judged concerning a certain monk who, believing that he was curing a certain woman of a swelling of the throat, as a surgeon opened that swelling with a knife. When *that* swelling had subsided somewhat, the *monk* himself instructed the woman that she should in no way expose herself to the wind, lest perhaps the wind, entering the opening of the throat, should cause her death. But the woman, having scorned his command, while gathering crops incautiously exposed herself to the wind, and thus much blood flowed out through the opening of the throat, and the woman in this way ended her last day; *she nevertheless confessed that, because she exposed herself to the wind,* [*she herself*] *had given herself the cause of death*. The question, namely, is whether, since the aforesaid monk is a priest, it is lawful for him to exercise the priestly office. We therefore respond *thus* to your fraternity: although the monk himself transgressed greatly by usurping another's office, which was by no means fitting for him, nevertheless, if he acted from a motive of piety and not of greed, was skilled in the practice of surgery, and took care to exercise all the diligence that he ought, he is not to be so condemned because of what happened through the woman's fault contrary to his advice that, after fitting satisfaction, he cannot be dealt with mercifully so that he may be able to celebrate divine offices; otherwise, according to rigor, the exercise of the priestly order is to be forbidden to him.

§ 1. Lastly, it was proposed from your part [*before us*] that a certain scholar, fearing that robbers might be in his lodging, arose from his bed, *having taken up a small sword in order to seek a light*, and, *when he came unwittingly to the door*, found a thief there who, *beginning to wrestle with the scholar*, not only threw the scholar himself to the ground but *also* wounded him almost unto death. *But the scholar, having been provoked by him and immediately repelling force with force, wrested the sword from the robber and struck him back while observing the moderation of law; the robber, terrified, hastened his flight as quickly as he could.* Therefore, when morning *dawned*, the scholars sought that robber, and, finding him wounded, delivered him to the podestà of Vicenza, before whom he steadfastly denied that he had committed the foregoing acts at all. Thereupon the aforesaid podestà sent *his* messengers to that scholar so that he might disclose

whether he knew anything concerning the aforesaid thief, or might deliver identifying objects. The scholar delivered to the aforesaid messengers the knife that he had taken from the robber himself, and the shoes left by the latter in his house, which the robber had taken off *for himself* so that the noise of his feet would not be heard, involving himself no further in that matter. The podestà, therefore, after receiving such identifying objects, delivered the robber himself to his officers to be punished; they amputated his genitals and put out his eyes. The robber, moreover, *went to a certain monastery, and there for three days*, moved by anger and pain, took neither drink nor food, and thus was taken from their midst. Wherefore you seek to be instructed by our pronouncement whether the aforesaid scholar may be promoted to sacred orders. We therefore respond thus to your inquiry: if the aforesaid scholar is supported by worthy merits, he is in no way to be barred from receiving sacred orders on account of the foregoing event. [*Given at the Lateran on the Ides of February, in the fourteenth year of our pontificate,* 1212.]

Chapter XX

Latin source headnote: One who gives cause for an abortion is a killer if what had been conceived was a living rational creature; otherwise it is otherwise.

The same, to the Prior and Brothers of the Carthusians.

As we learned from the tenor of your letters, when a certain priest of your order, who had formerly been a black monk, seized by the belt, as if in play, a certain pregnant woman with whom he had contracted a dishonorable association, and who asserted that she had conceived by him, the *woman afterward* asserted that through this she had been so injured that on this account she miscarried. On account of this the same priest, having made use of the counsel of upright men, decided that he should separate himself from the ministry of the altar. *Wherefore you humbly petitioned us that we deign to act mercifully with him.* We, however, respond to your devotion by this present communication that, if what was conceived had not yet been given life, he will be able to minister; otherwise, he ought to abstain from the office of the altar. [*Given at the Lateran on the fourth day before the Nones of October, in the fourteenth year of our pontificate,* 1211.]

Chapter XXI

Latin source headnote: It is not imputed to a cleric seeking justice civilly against a layman if the judge exacts vengeance of blood upon the layman.

The same, to Bishop S.

You petitioned. (*And below:* [*cf. c.* 14, *On a Competent Forum, II.* 2.]) You asked further whether it is lawful for you to implore the royal power against certain persons who, in contempt of a sentence of excommunication, withhold the tithes due to churches, since they can scarcely be constrained to pay them without the shedding of blood. To this we respond *briefly* that, if, when you simply lodge a complaint of this kind, the king—to whom the sword has been committed for the praise of the good, but the punishment of the evil—exercises upon those same rebels the power delivered to him, it will be imputed to their hardness or malice. [*Concerning cemeteries, etc.; cf. c.* 7, *On the Consecration of a Church, III.* 40. *Given at the Lateran on the third day before the Kalends of May, in the sixteenth year of our pontificate,* 1213.]

Chapter XXII

Latin source headnote: Accidental homicide is not imputed to one who did not kill and was not at fault, even if by way of precaution he sought pardon.

Honorius III, to the Bishop of York.

The *humble* confession presented to us by the cleric I. disclosed that, when he was of boyish age, playing with certain companions of his own age and pursuing one of them, he threw a stone after him, not indeed with the intention *of injuring him*, but of striking fear into him. Although the boy was neither struck nor touched by the thrown stone, nevertheless, falling upon another stone and injuring his head, he died *after the space of forty days*, partly through the inexperience of the physician and partly through the neglect of his father, who exposed him *in summertime to work and sweat in the fields*. But because the said cleric, so that the grief of the dead boy's father might be mitigated, *being an ignorant boy induced by friends*, sought pardon from him concerning this, you repel him *on this occasion* from receiving sacred orders, although the same father of the deceased, laboring at the point of death, confessed to you and *your archdeacon, and also* to the priest to whom he disclosed his conscience, and confirmed by an oath, that the cleric had committed nothing in the death of his son, as had become *fully* established to him. Wherefore the same cleric petitioned us *as suppliantly as humbly* that, since he did not have an injured conscience concerning that death, we deign to act mercifully with him. Therefore, *by apostolic writings* we command your fraternity that, *after diligent inquiry has been made into the truth concerning these matters*, if it shall be established that it is so, you do not on this account repel him from receiving sacred orders.

Chapter XXIII

Latin source headnote: Accidental homicide is not imputed to one who was engaged in a lawful act and was not at fault.

The same, to the Bishop and Chapter of Vannes.

The priest John showed us by his humble communication that, when *on a certain day* he rang the bells so that, when the signal had been given, the faithful people might assemble for divine offices, a falling bell struck a certain boy *standing* before it. Although, having been wounded in the head, he received the care of physicians for a month, *after a month nevertheless* he died, since the wound was mortal. *Wherefore he humbly petitioned us that, acting mercifully with him, we permit him freely to exercise the priestly office.* We, therefore, considering that nothing could be imputed to the said priest, who was engaged in a lawful act, if he did not foresee every accidental event, command your discretion that, if *it shall be established to you that the matter* is so, you permit the said priest, *if no other canonical impediment stands in the way*, to exercise the priestly office *with the obstacle of any appeal removed*.

Chapter XXIV

Latin source headnote: A cleric who fights even against enemies of the Catholic faith, if he struck anyone and his conscience reproaches him concerning a killing, ought to abstain from the ministry of the altar.

The same, to Pelagius the Priest.

Your petition presented to us contained that, when the enemies of the Lord's cross and blasphemers of the Christian name gravely attacked a certain fortress in which you dwelt, and its inhabitants, clerics as well as laymen, went out against them and fought one another, very many were killed on both sides. Wherefore, because you struck some men, you fear that you incurred irregularity, and *you humbly petitioned us that we deign to write to you what you ought to do. Therefore, we* command your discretion that, if concerning the killing of anyone in that conflict your conscience reproaches you, you reverently abstain from the ministry of the altar, since it is more prudent in a doubt of this kind to abstain than rashly to celebrate.

Chapter XXV

Latin source headnote: It says the same as the chapter *John* above in this same title, and places a difference only in the facts.

Gregory IX.

A certain man, as you assert, having been summoned by a priest to assist in the construction of a church, fell together with a ceiling panel that the same priest was attempting to loosen, and on this occasion was taken from human affairs. (*And below:*) Considering, therefore, that the priest himself was engaged in a lawful act, and also took care to exercise the diligence that he ought, those standing around to whom danger threatened having been warned so timely and in so loud a voice that they could both understand and flee, we respond thus to your inquiry: on account of this cause, or because he perhaps did not foresee all accidental events that cannot be foreseen, he ought not to be impeded with respect to office or benefice.

Title XIII: On Tournaments

Chapter I

Latin source headnote: Tournaments ought not to be held, and penance is granted to one wounded in them; but if he dies, ecclesiastical burial is denied to him if he entered with the intention of fighting; it is otherwise if he entered for another cause, as, for example, to exact debts owed to him. It says this together with the following chapter.

From the Lateran Council.

Adhering to the footsteps of our predecessors of happy memory, *Pope* Innocent and Pope Eugenius, we prohibit the holding of those detestable markets or fairs, which are commonly called tournaments, in which knights are accustomed to assemble by agreement and rashly engage one another for the display of their strength and boldness, whence the deaths of men and dangers to souls often result. But if any of them shall have died there, although penance is not to be denied to him when he asks for it, nevertheless he is to lack ecclesiastical burial.

Chapter II

Latin source headnote: It says the same as in the preceding chapter.

Alexander III, to the Bishop of Anagni.

You should know that it has come to our hearing that, when a certain man had gone to a place appointed for tournaments for the sake of seeking *his* debts *from certain knights whom he thought would come there, it happened that he was crushed and died when the horse on which he was sitting fell violently and heedlessly upon him; but beforehand he received the Lord's body and was anointed with the anointing of holy oil. Wherefore, because he received death at a tournament, he is barred from the burial of the faithful.* But *we*, considering that ecclesiastical burial ought to be forbidden only to those *as we believe* who, entering tournaments solely with the intention of doing so, die there, command your fraternity that, if it shall be established to you that *the aforesaid I.* came to the aforesaid tournament not with the intention of taking part in the sport but of receiving what was owed to him, although he died there by an accidental event, you cause his body by ecclesiastical dispensation to be delivered for burial, especially if he received the Lord's body and was anointed with the anointing of holy oil.

Title XIV: On Clerics Fighting in a Duel

Chapter I

Latin source headnote: A cleric who enters a duel, whether he offered it or accepted it, is to be deposed; nevertheless, the bishop will be able to dispense with him if death or mutilation of a member did not follow from it.

Alexander III.

Furthermore, if a cleric voluntarily offered a duel to someone, or, *if* it was offered, accepted *and undertook* it, whether he was victor or vanquished, by the rigor of law he is deservedly to be deposed. But however grave and enormous his offense in this may be, he can escape the sentence of deposition if his bishop shall decide that a merciful dispensation should be granted to him, provided that homicide or the diminution of members did not follow from that duel.

Chapter II

Latin source headnote: A cleric is irregular not only if he himself kills directly, but also if a champion furnished by him kills the adversary; nor does custom excuse him. Nevertheless, a dispensation can be granted to him concerning the holding of a benefice.

Celestine III.

Henry, the priest *bearing the present letters*, humbly informed us that, when he had proceeded against a certain layman concerning theft in a secular court, *he*, because his witnesses failed, introduced a champion according to the evil custom of the land, who wounded the accused with blows *of the sword* to such an extent that he was compelled to die *the following night*. Therefore, because you wished to consult us concerning this, we remove your uncertainty by this response: such champions are true killers, and the aforesaid priest, although not he himself but another fought for him in the duel, ought not to minister in sacred orders, as the institutions of the sacred canons *also* teach. There is no doubt, moreover, that homicide is perpetrated by deed as well as by command, or by counsel or defense; nevertheless, a merciful dispensation can be granted to him concerning the holding of a benefice.

Title XV: On Archers

Sole Chapter

Latin source headnote: An archer and crossbowman acting against Christians is to be excommunicated. It says this.

Innocent III.

Under anathema we prohibit henceforth the exercise against Christian and Catholic persons of that death-dealing art, hateful to [*God*], of crossbowmen and archers.

Title XVI: On Adulteries and Defilement

Chapter I

Latin source headnote: One who defiles a virgin is bound to endow her and take her as wife; and, if he does not wish to contract with her, he will be chastised corporally in addition to furnishing the dowry. It says this together with the following chapter.

In Exodus.

If anyone shall seduce a virgin not yet betrothed and shall lie with her, he shall endow her and shall have [*her*] as wife. But if the virgin's father shall be unwilling to give her, he shall pay money according to the measure of the dowry that virgins are accustomed to receive.

Chapter II

Latin source headnote: It is summarized in the immediately preceding chapter.

Gregory, to the Bishop of Siponto.

It has come to us that Felix, *your nephew*, defiled a certain virgin, *a thing wicked even to say*. If this is true, although he would have to be chastised by a [*grave*] penalty according to the law, *we nevertheless*, softening the law's severity to some extent, ordain in this manner: either let him have as wife the woman whom he defiled, or *certainly*, if he thinks that this should be refused, let him be chastised *more strictly* in body and excommunicated, and let him be thrust into a monastery in which he is to do penance, from which there is to be no permission *for him* to depart without [*our*] command. [*Therefore, let your fraternity take care that these things are fulfilled, etc.*]

Chapter III

Latin source headnote: A husband retaining an adulterous wife before she has completed penance is a participant in the offense; it is otherwise if she has done penance. Nevertheless, he ought not to receive her repeatedly.

From the Council of Arles.

If a man, knowing that his wife has transgressed, lives with her when she has not done penance but remains in *her* fornication, the *man* will be guilty and a participant in her sin. But if the woman after being dismissed shall have done penance and shall wish to return to her husband, he ought to receive the sinner, *who has done penance*, but not repeatedly.

Chapter IV

Latin source headnote: A husband can accuse his wife of adultery on account of suspicion, and in accusing her he is preferred to others.

From the Council of Paris.

It has *indeed* been permitted to husbands to accuse their wives even upon suspicion, and they themselves more than others can both accuse concerning adultery and defend.

Chapter V

Latin source headnote: On the confession of a woman alone, asserting that she committed adultery with a priest, the priest ought not to be punished; but if he is in ill repute, purgation can be imposed upon him. If he furnishes it, he is absolved, but if he fails, he is suspended from office.

Alexander III.

You informed us that a certain priest, *at the instigation of the devil*, slept *frequently, as you assert*, within a church with another man's wife. She publicly disclosed to you *indeed* that she and he had confessed an offense of this kind to a certain priest, and that same priest said this very thing in your presence while concealing the name of the adulterer. You sought counsel *from the Apostolic See* concerning what ought to be done in this matter when, although the adulterer denies it, the woman persists in her confession. We therefore command that, imposing a fitting penance upon the aforesaid adulteress, you take care to reconcile the *aforesaid* church by the sprinkling of holy water. But upon the aforesaid priest, lest, contrary to the Apostle, the hearts of the weak be struck by his ill repute, and lest our ministry be disparaged, and lest priests, becoming more secure, fall more freely into sin, you are to impose, according to your judgment, purgation with five neighboring priests whom you shall know to be unwilling to perjure themselves. If he shall be able to purge himself, you are to permit him to minister in his office; otherwise, you are not to postpone suspending him from his office.

Chapter VI

Latin source headnote: A spouse cannot proceed against a spouse for adultery if the former is also proved to have committed adultery.

Innocent III, to the Archbishop of Tours.

We have understood, *both through the letters of our venerable brother the Bishop of Poitiers and through those matters which were proposed on behalf of the parties before our beloved son Andrew, our subdeacon and chaplain, who was appointed auditor in this matter*, that, when the layman S. had driven H., his wife, from marital consortium *without a reasonable cause*, *the same bishop*, their diocesan, hearing that the same *woman* was fornicating with a certain adulterer, bound her and him by the bond of excommunication. At length, after abjuring the adulterer and receiving absolution before the aforesaid bishop, she petitioned that the aforesaid man be restored to her. But he, objecting against her to *this* adultery, *of which he said that she had begotten offspring*, and alleging that she had not been expelled by him but had departed of her own accord, proposed that restoration of himself *to her* was by no means to be made. The aforesaid woman, wholly denying this, replied against him that he had fornicated *and had begotten offspring from the fornication, on account of which he could not use such an exception against her. But when the faculty of proving these matters had been granted to each party, the aforesaid woman proved the same man's adultery through certain*

witnesses, whom the man himself said ought to be rejected as less suitable, and at length an appeal was made by him to our presence. Therefore, *by apostolic writings* we command your fraternity that, unless it shall be established to you either through the manifestness of the matter or through a lawful confession of the woman that she had committed adultery voluntarily, if proof of the adultery that the man is said to have committed fails, you compel him to receive her. But if the woman's fornication is established in the aforesaid manner, unless the witnesses through whom the man's adultery was proved shall have been rejected, since the right of marriage remains injured in each party and equal offenses are removed by mutual compensation, you are nevertheless to compel him to receive her and treat her with marital affection; otherwise, you are not to postpone imposing silence upon the *aforesaid* woman. [*Given at the Lateran on the sixth day before the Kalends of May, in the eleventh year,* 1208.]

Chapter VII

Latin source headnote: A marriage ought not to be separated with respect to the marriage-bed on account of adultery when both spouses have committed adultery.

The same, to the Bishop of Amiens.

Your fraternity asked *us* whether, when someone denies the conjugal debt to his wife who has been detected in adultery, if he himself afterward manifestly perpetrates adultery with another woman, *the wife having done penance for what was committed and humbly sought pardon, the husband* ought to be compelled to treat her with marital affection. Concerning this we respond *thus* to you: since equal crimes are removed by mutual compensation, a husband of this kind cannot decline the consortium of his wife on the pretext of her fornication. [*Given at Anagni on the Ides of June, in the eleventh year,* 1208.]

Title XVII: On Robbers, Incendiaries, and Violators of Churches

Chapter I

Latin source headnote: By reason of robbery, someone is allotted the forum of one who is not his judge, and he can be punished by that judge with his own judge supporting him.

From the Council of Meaux.

Concerning those who *have a benefice or inheritance within a parish, are parishioners of another bishop, and* travel from place to place and there commit robberies and depredations, it was determined that they be excommunicated by the prelate of that place, and not depart from that parish before they worthily make amends for what they perpetrated. Their excommunication is to be made known *to their superior and* their own bishop, lest he receive them before they return to the place where they committed the robbery and make full amends for everything.

Chapter II

Latin source headnote: A manifest robber or violator of a church, if he restores or gives security for restoration, is admitted during life and at death to penance and burial. But if he was unwilling to give security when he could, and at death cannot do so, clerics ought not to be present at his burial; and clerics who are present or impose penance contrary to this disposition are deposed from office and benefice.

Eugenius III.

Concerning that, moreover, *which by common deliberation with our brothers we decreed in council regarding robbers and violators of churches, and priests who should attempt to impose penance upon them or to receive their offerings contrary to our statute, we decree in that same constitution, following the footsteps of the holy Fathers, and likewise confirm by the authority of God and of the blessed Apostles Peter and Paul,* We decree that, if anyone among those *robbers* who, *at the devil's suggestion, have violently risen up to robbery in the City*, or anyone who has been manifestly apprehended in the violation of churches, does not first restore what was taken, if he can, or furnish firm and full security for making amends, the benefit of penance is to be denied to him entirely. But if, *which may it not happen*, he shall have persisted in his contumacy until death and, placed at the point of death, shall humbly have sought the remedy of penance, if he shall furnish amends or security for making amends *and shall give suitable sureties who ought to restore what was taken*, penance and ecclesiastical burial are to be granted to him. But one who, while in health, did not repent or make amends, through an obstinate mind, and at death was unable to furnish security *and sureties, as we have said*, the solemnity of penance *indeed* appears, as we believe, to profit him little; nevertheless, if he is contrite for his sin, viaticum is not to be denied to him, yet in such a manner that no cleric is present at his burial or presumes to receive his alms. But if any priests or clerics should attempt, contrary to this, to give penance during life or at death, to be present at *their* burial, or to receive their alms, or should be found participants in robbery of this kind, let them suffer irrecoverable loss of their order and lack ecclesiastical benefice.

Chapter III

Latin source headnote: Those who capture or despoil faithful persons traveling by ship for a just cause ought to be excommunicated. It says this first. Those who despoil persons suffering shipwreck are excommunicated unless they restore what was taken. This is the second point.

From the Lateran Council.

Let those *also* be subjected to excommunication who presume either to capture Romans or other Christians carried by ship for trade or other honorable causes, or to despoil them of their possessions. Those also who, with condemned cupidity, despoil of their possessions Christians suffering shipwreck, to whom according to the rule of faith they are bound to render assistance, are to know that they are subject to excommunication unless they return what was taken.

Chapter IV

Latin source headnote: By delegation of the prince, prelates can judge concerning robbery and other crimes; nevertheless, they cannot inflict a penalty of blood.

Alexander III, to the Archbishop of Palermo.

It is *said to happen* sometimes in your archbishopric *that* Saracens seize Christian women and boys and presume to abuse them, and at times do not fear even to kill some, [*a thing terrible to hear*]. Since, moreover, *our dearest son in Christ, the illustrious* William, King of Sicily, has committed offenses of this kind to you and other bishops to be punished, *your prudence led you to consult us as to what is to be done with Saracens who have been caught in so nefarious a crime. Concerning this, certainly,* We respond thus to your consultation: you will be able to chastise such persons existing within your jurisdiction with a monetary penalty, and even to afflict them with scourges, yet with [*such*] moderation employed that

the scourges by no means appear to pass into vengeance of blood. But if the offense *of the Saracens concerning this matter* shall have been so grave that they ought to suffer death or the cutting off of members, you are to reserve *the exercise of that vengeance* to the royal power.

Chapter V

Latin source headnote: An incendiary of a church, repenting and absolved at death, is buried in a cemetery, and his heirs are compelled to make satisfaction according to the means of the deceased. It says this.

The same, to the Bishop of Clermont.

It was contained in your letters, *which I., the bearer of the present letters, presented,* that H., who had been entangled in many crimes and had committed the burning of churches at the devil's instigation, at length, when placed in his *last* illness, *confessed himself a sinner, and,* after accepting penance for what had been committed, was absolved from the sentence of anathema by the hand of his chaplain; but at death he could not have ecclesiastical burial. Therefore, if the matter so occurred, *by apostolic writings and by way of precept* we command your fraternity that, with appeal ceasing, you cause the body of the same *father of the aforesaid I.* to be buried in the cemetery, and admonish and compel his heirs worthily to make satisfaction, according to his means, to those upon whom he had inflicted losses contrary to justice through burning or in another manner, so that he may thus be freed from sin.

Chapter VI

Latin source headnote: There is not said to be abduction where a willing woman is carried away for marriage; nevertheless, the abductor can contract marriage with the woman abducted, and after consummation of the marriage one cannot enter religious life without the consent of the other. It says this together with the following chapter.

Lucius III, to the Bishop of Burgos.

When we had committed to *your experience for termination* the case that is pending between the knight E., *the bearer of the present letters,* and his wife, *the knight E., seeking her return and asserting that the woman had lawfully married him, steadfastly declared that he would prove this through canonical proofs. The woman, however, proposed that, having been given to another man at the suggestion of her lords and parents, she turned away from the love of that knight, who had previously carried her away from her parents, yet with her willing, as is said, and afterward, before he knew her carnally, betrothed her; thereafter she was enclosed in a monastery of nuns, where she is also detained. Wherefore, because concerning these matters your prudence decided that the Apostolic See should be consulted, by this present communication to you* We respond that, since abduction is said to be committed where nothing concerning marriage is treated beforehand, this man ought not to be called an abductor, since he had the woman's assent and betrothed her before he knew her carnally, although her parents *perhaps* protested, from whom he is said to have carried her away. Furthermore, since after marriage has been perfected by carnal union, the Apostle bearing witness, the wife does not have power over her own body, but the husband does, and conversely, if it shall have become clear, either from the man's *canonical* proofs or from the woman's confession, that the marriage preceded, she could not afterward enter a monastery or otherwise profess continence without the man's assent. Therefore, because after the consummated marriage the abducted woman was placed

by force in the monastery, she will not be able to decline the consortium of the husband, especially if it cannot be proved that the husband assented that the woman should profess continence.

Chapter VII

Latin source headnote: A woman who has been abducted can contract marriage with her abductor when free faculty in contracting is given to her.

Innocent III, to the Bishop of Saron.

Coming to the Apostolic See. (*And below:* [*cf. c.* 24, *On Prebends, III.* 5.]) A girl who has been abducted will contract lawfully with her abductor if her prior dissent afterward passes into consent, and what displeased her before at length begins to please her, provided that the persons are legally qualified to contract.

Title XVIII: On Thefts

Chapter I

In Exodus.

He who steals a man and shall sell *him,* having been convicted *of the offense,* shall die by death.

Chapter II

Latin source headnote: The ecclesiastical sacraments are to be denied to thieves and robbers dying in sin; it is otherwise if they repented at death.

From the Council of Tribur.

If thieves and robbers are killed while stealing or plundering, it was determined that prayer is not to be made for them. But if, having been captured or wounded, they shall have confessed to a priest or deacon, we do not deny them communion.

Chapter III

Latin source headnote: One who commits theft from a necessity that is not very urgent sins, but not gravely; wherefore a light penance is to be imposed upon him. It says this according to the common understanding.

From the Penitential of Theodore.

If anyone shall have stolen foodstuffs, clothing, or livestock on account of the necessity of hunger or nakedness, let him do penance for three weeks; and, if he shall have returned it, let him not be compelled to fast.

Chapter IV

Latin source headnote: One who does not disclose a thief on account of the gain that he obtains from him is guilty of sin.

Jerome, on Proverbs.

"He who shares with a thief kills his own soul." Not only the thief is held guilty, but also the one who, aware of the theft, does not disclose it when the possessor makes inquiry.

Chapter V

Latin source headnote: A secret thief can, after restitution and penance, be promoted to sacred orders.

Alexander III, to the Bishop of Cremona.

From your letters, *if we remember rightly, it became known to our ears, and the diligent report of the beloved son I., our subdeacon, disclosed,* that B., *the bearer of the present letters,* seizing a certain chalice incautiously left in a church, presumed to retain it for a long time. *Afterward, nevertheless, being led by repentance, he humbly and reverently disclosed his offense to a priest in confession, and, according to the counsel of the same priest, made satisfaction concerning it to the church, as was fitting. Wherefore, because on account of this very matter the discretion of your fraternity hesitates to ordain him, by apostolic writings and by way of precept* We command your prudence that, if *the aforesaid B.* voluntarily confessed *the offense of presumption of this kind,* made satisfaction concerning it to the church whose chalice it had been, and has not been stained concerning this with a manifest mark or ill repute, after the penance or a suitable part of the penance has been completed, provided that you know him to be otherwise suitable, you do not hesitate to promote him to sacred orders.

Title XIX: On Usuries

Chapter I

Latin source headnote: Usury is to make profit from the fruits of a thing given in pledge; this fails in the case excepted here.

Alexander III, in the Council of Tours.

Many clerics, *and, what we say with sorrow, even those who by verbal profession and habit have left the present world, while they abhor ordinary usuries as if more manifestly condemned, lend money to persons in need, receive their possessions in pledge, and take the fruits arising from them beyond the principal. Therefore,* The authority of the general council has decreed that no one *henceforth* established in the clergy presume to practice either this or another kind of usury. And if anyone [*up to this time*] has received another's possession in pledge under this appearance or condition in return for money given, if, after expenses have been deducted, he has already received his principal from the fruits, let him restore the possession absolutely to the debtor. But if he has something less, after that has been received, let the possession return freely to its owner. But if after a constitution of this kind anyone established in the clergy shall have persisted in the detestable profits of usuries, let him suffer peril to ecclesiastical office, unless perhaps it was a benefice of a church that appeared fit to be redeemed for it in this manner from the hand of a layman.

Chapter II

Latin source headnote: In effect, it says the same as the preceding chapter, but adds tacitly that the same applies to laymen. For in the preceding chapter mention was made only of clerics.

The same, to the Archbishop of Canterbury and his Suffragans.

Because it is dangerous not only for ecclesiastical men but also for any others to devote themselves to the profits of usuries, by the authority of the present letters we have decided to enjoin upon *you* that, through ecclesiastical coercion and without the exaction of usuries, you compel those who, after expenses have been deducted, have *already* received *their* principal from the possessions or trees that they are known to hold in pledge, to restore those pledges.

Chapter III

Latin source headnote: Manifest usurers cannot be admitted to the communion of the altar, ecclesiastical burial, or the offering of an oblation; and clerics acting contrary to this are to be punished as is stated here.

The same, in the Lateran Council.

Because in almost every place the crime of usuries has become so strong that many, setting aside other businesses, practice usuries as if lawfully, and pay no attention to how they are condemned by the page of each testament, we therefore decree that manifest usurers are neither to be admitted to the communion of the altar nor, if they die in this sin, to receive Christian burial, and that no one is to receive their offerings. But whoever shall have received them or delivered them for Christian burial is both to be compelled to return *what* he received and to remain suspended from the exercise of his office until he makes satisfaction according to the judgment of his bishop.

Chapter IV

Latin source headnote: It can be understood in two ways: first concerning the lender, and second concerning the recipient of usuries; and according to the first understanding it says this: it is not lawful to receive usuries even for a pious work when through the receipt cause is given for usury to be committed. It says this. Or thus, and more clearly: it is not lawful to induce anyone to practice usuries, even for a pious work. And this reading is gathered from the decision.

The same, to the Archbishop of Palermo.

Concerning that, moreover, *which your affection asked of us—whether a dispensation can be made for receiving money at usury so that the poor who are held in captivity by the Saracens can be freed through that same money—by these present letters to you* We respond that, since the page of each testament detests the crime of usuries, we do not see that any dispensation can be made concerning this, because, since sacred scripture forbids a person *even* to lie for the life of another, much more must one be forbidden to become involved in the crime of usuries even for redeeming the life of a captive.

Chapter V

Latin source headnote: Usurers who are solvent are compelled by the penalties of the Lateran Council to restore usuries, even those that they received before the council; and when means do not exist, possessions bought from money lent at interest ought to be sold, and satisfaction ought to be made to those entitled to receive it.

The same, to the Archbishop of Salerno.

When you, *as you assert*, commanded that manifest usurers, *namely those who died in that sin*, according to our decree that was recently promulgated in council, be deprived of the communion of the altar and ecclesiastical burial until they return what they had received so wickedly, certain of them *say that their own resources are insufficient to pay the usuries received. Others, however, promise that* [*they*] *will return the portions of the usuries that they have at hand; but they confess that they cannot return other usuries that they had extorted, since possessions were purchased from them and delivered to their children or parents. Others, however,* shamelessly, in order to excuse excuses in sins, affirm that only those usuries are to be restored which were received after our prohibition, *and that no persons ought to be compelled to pay usuries that they had received before our prohibition.* Concerning these matters we thus respond to your fraternity: whether before or after our prohibition they extorted usuries, they are to be compelled by the penalty that we established in council to restore them to those from whom they extorted them, or to their heirs, or, if these do not survive, to distribute them to the poor, provided that they have in their resources that from which they can restore them, since, according to the word of blessed Augustine, sin is not remitted unless what was taken is restored. But those who do not have in their resources that from which they can restore the usuries ought not to be chastised by any penalty, since the mark of poverty manifestly excuses them. The possessions, however, that were purchased from usuries ought to be sold, and their prices restored to those from whom the usuries were extorted, so that thus they may be freed not only from *that* penalty but also from the sin that they had incurred through the extortion of usuries.

Chapter VI

Latin source headnote: One who sells a thing for more than it is worth because he defers payment sins, unless it is doubtful whether at the time of payment the value of the thing will have changed, and the seller would not have been going to sell at the time when he sold. It says this according to the common understanding.

The same, to the Archbishop of Genoa.

You say that in your city it often happens that certain persons buy pepper, cinnamon, or other merchandise, which at that time is not worth more than five pounds, and promise *through a public instrument* that they will pay six pounds at the established term to those from whom they receive that merchandise. Although a contract of this kind cannot from such a form be deemed to bear the name of usuries, nevertheless the sellers incur sin unless it is doubtful whether that merchandise will be worth more or less at the time of payment. And therefore your citizens would consult well for their salvation if they ceased from such a contract, since the thoughts of men cannot be hidden from almighty God.

Chapter VII

Latin source headnote: A usurer who, after admonition, does not desist, if he is a cleric, is suspended from office and benefice; if a layman, he is excommunicated.

The same.

Furthermore, you are to forbid your parishioners to receive usuries *in every way, because the page of each testament detests the crime of usuries*. If they should scorn to obey *your admonitions*, if they are clerics, you

are to suspend them from office and benefice; if [*however*] they *are* laymen, you are to bind them with the bond of excommunication until worthy satisfaction.

Chapter VIII

Latin source headnote: The fruits of a thing given in pledge ought to be computed toward the principal, and it excepts one case.

The same, to the Abbot and Brothers of Saint Laurence.

The cleric C., *the bearer of the present letters, complained to us that, although from a certain piece of land that his father obligated to you, after expenses were deducted, you received your principal, you nevertheless still detain that land, not without derogation from your salvation, uprightness, and reputation. Wherefore, by apostolic writings and by way of precept* we command your discretion that, if you detain that land by title of pledge and have received *your* principal from its fruits, you return the aforesaid land to the aforesaid cleric *with delay and appeal ceasing, and leave him in peace and quiet,* unless *perhaps* that land is of the fief of *your* monastery.

Chapter IX

Latin source headnote: An heir, whether the usurer's son or an outsider, is compelled to restore usuries extorted by the deceased.

The same, to the Bishop of Piacenza.

Your fraternity led us to be consulted as to what is to be observed concerning the sons of usurers who succeed them when they have died in the crime of usuries, or concerning outsiders to whom you assert that the goods of the usurers have devolved. We therefore respond to your question by the present letters that sons are to be compelled to restore the usuries by the same coercion by which their parents, if they were living, would be compelled. We believe that this same thing is also to be exercised against outside heirs.

Chapter X

Latin source headnote: One who lends with the intention that he receive something beyond the principal is bound in the forum of the soul to restore it if he obtained anything from this. The same applies to one who does not give permission for an oath unless he receives something from it. And the same applies to one who sells a thing for more than it is worth because he defers payment.

Urban III.

Your devotion consulted us, *in which we commend the solicitude of the priestly office,* whether in the judgment of souls he ought to be judged as a usurer who, not otherwise intending to make the loan, lends money with the intention that, although every agreement is absent, he nevertheless receive more than the principal; and whether he is involved in the guilt of the same crime who, as is commonly said, does not otherwise grant permission for an oath until, although without exaction, he receives some emolument from it; and whether a merchant ought to be condemned by a similar penalty who sells his merchandise for a far greater price if a longer delay is extended for making payment than if the price is paid to him immediately. But because what is to be held in these cases is manifestly known from the Gospel of Luke, in which it is said, "Make a loan, hoping for nothing from

it," persons of this kind, on account of the intention of gain that they have, since every usury and surplus is prohibited in the law, are to be judged to act wickedly and, in the judgment of souls, effectively induced to restore the things that were received in such a manner.

Chapter XI

Latin source headnote: A manifest usurer who appeals in order to evade restitution is not to be heard.

Innocent III, to the Prelates Established in the Kingdom of France.

How pernicious *the vice of usuries is, we do not believe your discretion to be ignorant, since, besides the canonical constitutions that have issued forth in hatred of them, through the Prophet it is given to be understood that those who give their money at usury are to be repelled from the tabernacle of the Lord; and usuries are prohibited in both the new and the old testament, since Truth itself commands, "Make a loan, hoping for nothing from it," and through the Prophet it is said, "You shall not receive usury or any surplus." Wherefore, by apostolic writings* We command you all that you not permit manifest usurers, *especially those* who are established to have publicly renounced usuries, to protect themselves by the evasion of any appeal when someone proceeds against them concerning usuries. [*Given at the Lateran on the fifth day before the Kalends of November,* 1198.]

Chapter XII

Latin source headnote: Through the withdrawal of communion with Christians and through secular princes, Jews are to be compelled to restore usuries.

The same, to the Archbishop of Narbonne.

After the pitiable. (*And below:*) [*But if any of those setting out for that place are bound by oath to furnish usuries, you, brother archbishops and bishops, throughout your dioceses, with the obstacle of appeal removed, are to compel their creditors by the same coercion, so that, completely absolving them from the oath, they desist from further exaction of usuries. But if any of the creditors shall compel them to pay usuries, with the obstacle of appeal removed you are to compel him to restore them by similar coercion.*] We command [*however*] that Jews be compelled to remit usuries to Christians by *you, sons*, the secular princes and powers. And until they shall have remitted them, by a sentence of excommunication we command that all communion with them be altogether denied by all Christ's faithful, both in trade and in other matters. [*Therefore, let no one altogether withdraw himself from this work, etc. Given at Rieti on the eighteenth day before the Kalends of September,* 1198.]

Chapter XIII

Latin source headnote: Notwithstanding an oath furnished by a debtor not to seek the return of usuries, a judge can by virtue of his office compel the usurer to restore the usuries.

The same, to the Bishop of Modena.

We received your questions some time ago, because certain usurers *of your diocese* cause those to whom they give money at usury to furnish an oath that they will not seek the return of the usuries and will raise no question concerning those that they have paid. We therefore respond *thus to your inquiry*: after prior admonition, through ecclesiastical censure and with appeal removed, you are to

compel the usurers themselves, before the payment of the usuries, to desist from exacting them, or to restore them after they have been paid, lest it happen that they obtain an advantage from *their* deceit and fraud, *who cause the oath to be furnished for this purpose, that they may not be troubled concerning the usuries*.

Chapter XIV

Latin source headnote: A usurer seeking the return of usuries is not heard unless he first restores those he extorted.

The same.

Because [*therefore*] he who acts against the law invokes the law's assistance in vain, we decree that, if any usurer shall obtain letters from us concerning the restoration of usuries or the computation of fruits toward the principal, unless he himself first restores the usuries that he is known to have received from others, he is in no way to be heard by authority of those letters. [*Given at Rome on the fifth day before the Kalends of January,* 1205.]

Chapter XV

Latin source headnote: One convicted of usurious depravity through public report and other arguments can be declared a usurer and restrained as a manifest usurer according to the disposition of the Lateran Council.

The same, to the Bishop of Auxerre.

Although there are very many usurers in your diocese concerning whom it is not in the least doubted that they are manifest usurers, no accuser appears against them on account of fear of *princes and* powerful persons who protect them, nor have those same persons been condemned by sentence. *You therefore decided to seek from the oracle of the Apostolic See how you can proceed against them. But we* respond thus to your fraternity: although no accuser appears against them, nevertheless, if by other arguments it shall have been established that they are manifest usurers, you will be able freely to exercise against them the penalty issued against usurers in the Lateran Council. [*Given at the Lateran on the seventeenth day before the Kalends of June, in the tenth year,* 1207.]

Chapter XVI

Latin source headnote: A husband receiving a pledge for a promised dowry is not bound to compute the fruits toward the principal. It says this; it is a singular case and is not proved elsewhere.

The same.

Salutarily. (*And below:*) Indeed, we do not believe that a son-in-law is to be compelled to compute toward the principal the fruits of the possessions that were obligated to him in pledge by his father-in-law for a dowry treated as paid, since frequently the fruits of the dowry are not sufficient to support the burdens of marriage.

Chapter XVII

Latin source headnote: One seeking the return of usuries is not heard unless he restores those extorted by himself or another from whomsoever he derives his cause.

The same, to the Bishop of Bologna.

The layman Michael sent his complaint to us that M. and certain other citizens of Bologna extorted many things from him and from his father, whose heir he became, in the name of usuries. (*And below:*) You are to take very attentive care that you do not proceed in that business by our authority unless the said complainant has restored, or still restores, any usuries that he himself or his father at any time extorted.

Chapter XVIII

Latin source headnote: Jews also are to be compelled to restore usuries extorted from Christians and to pay tithes or offerings from their possessions.

The same, in the General Council.

The more the Christian religion is restrained from the exaction of usuries, the more gravely the perfidy of the Jews grows strong in these matters, so that within a short time they exhaust the resources of Christians. Wishing, therefore, to provide in this respect for Christians, lest they be inhumanly burdened by Jews, we establish by synodal decree that, if henceforth under any pretext Jews shall have extorted grave or immoderate usuries from Christians, participation with Christians is to be withdrawn from them until they have made suitable satisfaction for the immoderate burden. Wherefore Christians, if there is need, are to be compelled through ecclesiastical censure and with appeal set aside to abstain from trade with them. We moreover enjoin upon princes that they are not on this account to be hostile to Christians, but rather are to take care to restrain the Jews from so great a burden. By this same penalty we decree that Jews are to be compelled to make satisfaction to churches for tithes and offerings due, which the churches were accustomed to receive from Christians from houses and other possessions before they came to the Jews by any title, so that the churches may thus be preserved without loss.

Chapter XIX

Latin source headnote: He is a usurer who receives from a debtor something beyond the principal, even if he assumes the risk upon himself. It says this first. A purchaser of a thing below the just price is not a usurer if at that time it is probably doubted whether at the time of payment the thing will be worth more or less. It says this second. By reason of doubt, one is excused who, because he defers payment of the price, sells a thing for more than it is worth, if he was not otherwise going to sell it. It says this third.

Gregory IX, to Brother R.

One who lends a fixed quantity of money to a person sailing or going to a fair, intending, because he assumes the risk upon himself, to receive something beyond the principal, is to be deemed a usurer. Likewise, one who gives ten solidi so that at another time the same number of measures of grain, wine, or oil are returned to him—which, although they are then worth more, it is probably doubted whether at the time of payment they will be worth more or less—ought not on this account to be considered a usurer. By reason of this doubt, he too is excused who sells cloth, grain, wine, oil, or other merchandise so that at a fixed term he may receive for it more than it is worth at that time, provided, nevertheless, that at the time of the contract he had not been going to sell it.

Title XX: On the Crime of Forgery

Chapter I

Latin source headnote: A false witness injures three: God, the judge, and the party; and not only one who tells a lie is false, but also one who conceals the truth.

Augustine.

A false witness is liable to three persons: first to God, whose presence he contemns; then to the judge, whom he deceives by lying; lastly to the innocent person, whom he injures by false testimony. Each is guilty, both he who conceals the truth and he who tells a lie, because the former does not wish to benefit and the latter desires to harm.

Chapter II

Latin source headnote: A sentence rendered through false letters ought not to be committed to execution.

Lucius III, to the Bishop of Worcester.

Concerning the fact that you were unwilling to commit to execution a sentence rendered by authority of false letters, we commend your prudence *very greatly*, commanding that, whenever any writings sent under our name appear to you liable to be refuted as false, you place no faith in them and do not observe what shall have been commanded through them, but cause the one who presented them to be carefully detained.

Chapter III

Latin source headnote: A cleric who forges a prince's seal is deposed. Likewise, a mark is impressed upon him, and he is sent into exile.

Urban III.

It came to our hearing, through your report, that, when you had committed to imprisonment certain *perverse* clerics who had forged the seal of *our dearest son in Christ, Philip, the illustrious* King of the French, *you decided to seek counsel from the Apostolic See as to what ought to be done by you concerning them. Wherefore we, on the counsel of our brothers*, respond thus to your fraternity: you are not to cause a member to be removed from them or a corporal penalty to be inflicted upon them through which they might incur danger of death; but, after they have *first* been degraded from their *own* orders, you are to cause some mark to be impressed upon them as a sign of the crime, by which they may be known among others, and, compelling them to abjure that province, permit them to depart.

Chapter IV

Latin source headnote: One present at the Curia is not to receive apostolic letters except from the hands of the Pope or of officials deputed by him; nevertheless, persons of distinction will be able to receive them through messengers, but from the hands of the aforesaid persons. One acting contrary to this, if a layman, is subject to excommunication; if a cleric, he is deposed from office and benefice. It says this as far as § *Adding*. — § 1. By the penalty of excommunication it provides against those

who do not surrender or destroy false letters within twenty days; and absolution is reserved to the Pope, and one made contrary to this is not valid. It says this. Abbas.

Innocent III.

Harsh commands [*and sometimes unjust appointments are asserted and wondered at by many to issue from the Apostolic See, and they place blame upon it in this, in which its sincerity, wholly ignorant of blame, is excused by innocence. For we, more frequently occupied with greater affairs and bearing by virtue of our office the care of all, through which we are debtors to all, since we cannot satisfy immediately all those pressing upon us, certain persons, because they cannot be heard—straying from the path of justice or extending the license of their petition beyond what uprightness permits—burst forth into the impulse of their own will; and, recurring with the studied malice of their mind to their devices of falsehood and arts of perdition, they endeavor through the cunning of a false appearance to blacken and deform the brightness of apostolic purity. How many and how great evils arise from the device of this falsehood, since through it both innocent persons are sometimes condemned and guilty persons are absolved from the crimes charged, and also the authority of the Apostolic See is injured, the evident malice of the matter itself declares. Although falsehood of this kind can for some time be hidden with the works of darkness, nevertheless, because through it an injury is especially inflicted upon the blessed Apostles, he from whom, in their person, the Roman Church received authority over all churches—whence also our bull, through which the business of the whole Christian body is conducted, is marked beforehand with the image of their heads—does not permit the destruction caused by so great a crime to be concealed any longer to their so great prejudice.*] *For it recently happened in the City that certain persons, practicing the cunning of falsehood more perniciously, were detected in their iniquities, so that we found among them both bulls under our name and under that of Pope Celestine, our predecessor of good memory, which they had falsely fashioned, and very many letters marked with bulls,* [*and, having captured them, we still detain them in prison.*] *But we, always wishing with paternal solicitude to provide for the honor of the Roman Church and the utility of all, on the common counsel of our brothers,* Decree, and under penalty of excommunication and suspension from order and benefice more strictly prohibit, that henceforth no one at the Apostolic See receive *our* letters except from us or from the hands of those who by our mandate are deputed to that office. But if a person shall have been of such authority that it is fitting for him to receive our letters through a messenger, let him send a suitable messenger *himself* to our chancery or to us ourselves, through whom he is to receive apostolic letters according to the prescribed form. But if anyone shall have been a transgressor of our mandate in this respect, if he is a layman, let him be subject to excommunication; if a cleric, let him be condemned to suspension from *his* office and benefice. [*But because, as we learned from the forgers themselves, the falsehood of their wickedness has been spread in many ways, through letters transmitted by them both to your regions and to other regions, by apostolic writings we command your fraternity and strictly enjoin upon you that you summon a provincial council, in which you are solemnly and generally to establish that it be publicly declared throughout the individual parishes that, if anyone shall have obtained letters from the Apostolic See whose tenor could be suspect and wishes to use them, in order that he may escape the established penalty, first a comparison of the false bull with a true one is to be made; and, if he shall find it to be marked by falsehood, he is not to delay presenting those same letters to the diocesan bishop, abbot, or archdeacon of the place, who, after the truth has been ascertained, is to subject the person who brought back such letters, if a layman, to excommunication; but if a cleric, is to suspend him from office and benefice.*]

§ 1. *To these things* Adding, we decree that you promulgate a general sentence of excommunication, which you are to cause to be renewed frequently throughout the individual parishes: that, if anyone

knows himself to possess false letters, within twenty days he is either to destroy those letters or surrender them, if he wishes to escape the penalty of excommunication; and we do not wish that penalty to be relaxed by anyone without our special mandate, except perhaps at the point of death. Nor, even if absolution shall have been presumed contrary to this, is it to have any validity, *lest perhaps, after our time, falsehood meanwhile concealed may be able to generate prejudice for anyone*. [*But concerning the rest, etc. Given at Rome at Saint Peter's on the fourteenth day before the Kalends of June, in the first year of our pontificate,* 1198.]

Chapter V

Latin source headnote: It lays down nine methods of falsifying papal letters.

The same, to the Archbishop and Canons of Milan.

Although we consider ourselves insufficient in life and knowledge for the governance *of the Apostolic See, which by the Lord's gift is the mother and teacher of all churches, nevertheless, insofar as the Lord shall have granted us in his mercy, we have proposed to abstain from those things through which derogation could deservedly be made against us; although, because of the defect of human weakness, we cannot always and in all things imitate the form of perfection in such a way that something does not at some time creep into our works that can be imputed to less circumspect providence—something that nevertheless happens not deliberately or with certain knowledge, but sometimes from ignorance or excessive occupation.* [*You indeed informed us through your letters that, when certain letters had been presented to you through which we appeared strictly to command you to receive I. of Cimilian., a cleric of your church, as canon and brother, and not to call anyone else as canon until he had fully obtained the benefit of a prebend, after the tenor of those letters had been diligently inspected, you scarcely believed that they had proceeded with our knowledge, or, if they had proceeded, that they had been obtained through excessive importunity.*]

But when, as provident and discreet men, you sent those same letters back to our presence so that from their inspection we might know more fully whether they had proceeded with our knowledge, we found more in them than your discretion had suspected. For although we began to doubt somewhat concerning the style of composition and the form of the writing, nevertheless we found the bull to be genuine, which at first led us into vehement wonder, since we knew that the letters themselves had by no means issued with our knowledge. Therefore, examining the bull more diligently on each side, we found it somewhat swollen in the upper part, which adheres to the cord. And when we caused the cord to be drawn a little, without any violence, from the swollen side, the bull remaining on the other cord, the cord on that side was torn away from it without any difficulty; at its end an indication of cutting was still apparent. Through this we plainly detected that the bull itself had been extracted from other letters and inserted into these through the vice of falsehood, as you will recognize more fully from the letters themselves, which for greater certainty we have decided to send back to you.

[*Since, therefore, so great an offense ought not to be left in any way unpunished, by apostolic writings we command your discretion and strictly enjoin upon you that, unless within twenty days after receipt of these letters, having been admonished by you, the said I. shall come to our presence to make satisfaction with the testimony of your letters, from that time you suspend him from every ecclesiastical benefice and clerical office, with the obstacle of any contradiction and appeal removed, or, if he lacks a benefice, bind him with a sentence of anathema; since he is not easily to be believed immune from this fault, because neither through his brothers nor his blood relatives could he induce us, although frequently entreated, to send you our letters concerning this. From this he could have recognized sufficiently the fraud of the author, even if he himself was not the principal forger, especially since he is said to have*

been present at the time when, on the common counsel of our brothers, we publicly established against forgers, among other things firmly prohibiting under penalty of excommunication that anyone receive apostolic letters except from our hand or from that of our bullator, with the sole exception of those to whom, on account of the eminence of their dignity, we granted that they could accomplish the same thing through faithful and known messengers.]

But in order that you yourselves may henceforth be able to detect the varieties *of falsehood of this kind* concerning our letters, *which we have detected thus far*, we have decided to express them *to you* in the present letters.

The first kind of falsehood is this: that a false bull is attached to false letters.

The second: that the cord is drawn *entirely* out of a genuine bull and, after another cord is inserted, is attached to false letters.

The third: that the cord, cut from the side on which the parchment is folded, is inserted with the genuine bull into false letters, and is restored beneath the same *fold with a cord of similar hemp*.

The fourth: *when from the upper part of the bull one part of the cord is cut beneath the lead and, after being attached to false letters through the same cord, is carried back beneath the lead*.

The fifth: *when, after sealed letters have been delivered, something in them is altered by a fine erasure*.

The sixth: *when the writing of letters to which a genuine bull had been attached is wholly effaced or erased with water or wine, and the same parchment, whitened anew with lime and other things according to the customary craft, is rewritten*.

The seventh: *when, to a parchment to which a genuine bull had been attached and which has been wholly effaced or scraped, another exceedingly thin written parchment of the same size is joined with very strong glue*.

We also do not *consider immune from the crime of falsehood those who, contrary to our constitution, knowingly receive our letters not from our hand or that of our bullator*.

Likewise, those who, *approaching the bull, carefully cast in false letters so that they may be sealed with a genuine bull along with the others*.

But these two kinds of falsehood cannot *easily be detected unless the falsehood is recognized either in the manner of composition, the form of the writing, or the quality of the parchment. In the other cases, however, a diligent investigator will be able* to observe the falsehood *more diligently either in the joining of the cords, the comparison of the bull, or its movement or bluntness, especially if the bull is not level, but is more* swollen *in one place and more depressed in another*. [*But if, etc. Given at Spoleto on the fourth day before the Nones of September,* 1198.]

Chapter VI

Latin source headnote: Papal letters are false in which a bishop is called a son, or an inferior a brother, or one person is addressed in the plural.

The same, to the Bishop of Antivari.

To how grave a penalty [*those are subject who do not fear to falsify apostolic letters, and who, concealing genuine letters obtained from us, do not fear to use false letters, we believe is not hidden from your fraternity.*] *You should know that it came to our hearing from the letters of our dearest son in Christ, Vulcan, illustrious King of Dioclea,*

and also from the tenor of your letters that you sent to our beloved son John, our chaplain, at Dyrrachium, that, when Dominicus, formerly Bishop of Suacium, who before the same chaplain and our beloved son S., our subdeacon, then exercising the office of legation in those parts, had been accused of homicide and in the council at Antivari had resigned the pontifical dignity, had formerly come to our presence, returning from us he presented certain letters to you, [*which we saw to be contained word for word in the letters already sent on your behalf to our aforesaid chaplain,*] *through which he asserted that the pontifical office had been restored to him by us. But you, placing faith in those letters, removed from that same church our venerable brother whom you are said canonically to have consecrated as bishop-elect of Suacium, and restored the aforesaid Dominicus in that church on the occasion of the false letters. But the aforesaid king, as he informed us by his letters, not believing that those letters had issued with our knowledge, commanded both Dominicus himself and the aforesaid bishop to be presented before us, humbly petitioning to be instructed by an apostolic rescript as to whatever we should decide was to be established concerning that business.*

But we, examining more diligently the letters that were presented to you under our name, manifestly detected falsehood in them both in their contents and in their composition. And in this we were *not a little* amazed that you had believed such letters to have issued from us, since *especially* you ought to know that the Apostolic See observes this custom in its letters: that we call *all* patriarchs, archbishops, and bishops "brothers" in our letters, but all others, *whether they are* kings *or* princes or other *men* of whatever order, "sons." And when our letters are directed to one person alone, we never speak to him in the plural so as to place "you" or "your" in the plural, and things similar to these, in the letters themselves. But in the false letters presented to you, in the salutation you were called "beloved son in Christ," although in *all* the letters that we ever sent to you, you could have seen yourself called by us "venerable brother." On account of this, *we wish you to be so circumspect in similar matters that through false letters you cannot again be circumvented or deceived; rather,* you are to take care to examine apostolic letters *more diligently*, both in the bull, cord, and parchment and in the style, so that in no way do you admit genuine letters as false or false letters as genuine. [*For you are to know, etc. Given at the Lateran on the Nones of December, in the third year of our pontificate,* 1200.]

Chapter VII

Latin source headnote: Those who by themselves or through others falsify letters of the Pope are excommunicated together with their supporters, and clerics are deprived of offices and benefices and are to be degraded and delivered to the secular court, by which a layman is lawfully punished. But one who uses false letters, if a cleric, is deprived of office and benefice; if a layman, he is excommunicated. It says this.

The same.

For confounding the malice of forgers, *we recall that on another occasion we sent apostolic letters in which we remember that we distinguished more fully the methods of falsehood, lest anyone be able to excuse himself through ignorance. But because it sometimes happens that those presenting false letters, after they have been refuted concerning them, say in their excuse that they obtained letters of this kind through others,* On the common counsel of our brothers we have decided to decree that those who wish to use our letters first examine them diligently, because, if they say that they used false letters in ignorance, their late repentance will not be able to avoid the penalties noted below. For we decree that all forgers of our letters who by themselves or *through* others practice the vice of falsehood are bound by the bond of

anathema together with their supporters and defenders, establishing that clerics who shall have been detected as forgers are perpetually deprived of all ecclesiastical offices and benefices, in such a manner that those who practiced the vice of falsehood by themselves, after they have been degraded by an ecclesiastical judge, are to be delivered to the secular power to be punished according to lawful constitutions, by which also laymen who shall have been convicted of falsehood are to be lawfully punished. But those who use false letters under our name, if they are clerics, are to be despoiled of ecclesiastical offices and benefices; if laymen, they are to remain subject to excommunication until they make suitable satisfaction, yet in such a manner that in the former and in the latter malice is punished more gravely than negligence; and we decree that this is also to be observed concerning those who obtain false letters.

Chapter VIII

Latin source headnote: A person is not presumed to falsify letters concerning simple justice, nor is he punished if, upon discovering this, he desisted from using them.

The same.

Coming [*to our presence, P., the priest bearing the present letters, showed us by his statement that, when formerly he had been sent by the archpriest and clerics of Casale Nuovo concerning certain cases in which they confessed that they were unduly burdened by you, and had come to our presence, he could not obtain his letters because at that time we were burdened by illness; and after he had remained at the Apostolic See for a few days, it happened that he too became ill. But while he was confined to a bed of sickness, a certain cleric of Casale Nuovo named Azo, who at that time was staying in the City, came to him and, under the hope of affection and favor, promised him that he would obtain from us the letters that he sought. He believed the man's word and furnished the expenses that the aforesaid cleric proposed that he would spend for the letters themselves. At length he brought to him certain letters of commission addressed to our venerable brother the Archbishop of Trani and the beloved son the Abbot of Coronata. The aforesaid priest, believing them to be genuine and to have issued with our knowledge, brought them to the delegated judges. And when in the presence of those judges you impugned the letters as false, and the priest himself and the other clerics of Casale Nuovo proposed that they were genuine, you sent those letters under the seal of the aforesaid judges to our presence; we manifestly detected that they were false. On account of this we commanded you by our writings that you send to our presence for punishment the one who obtained the aforesaid letters, suspended from office and benefice. But because his conscience rendered the aforesaid priest innocent, after you suspended him from office and benefice he hastened to our presence to excuse his innocence. But when he remained with us for a longer time and sought mercy from us, alleging complete ignorance of the aforesaid falsehood, we nevertheless decided that he should be sent back to you with our letters so that he might find the mercy for which he prays. Wherefore,*] *by apostolic writings* we command your fraternity that, if the apostolic letters in which falsehood was detected contain a form of simple justice, since it ought not to be presumed that anyone committed the fraud of falsehood for such letters, which can easily be obtained *by anyone*, [*after canonical purgation has been received from the priest himself that he was not aware of the falsehood,*] and he did not use [*those*] letters after he knew them to be false, you, restoring to him [*in consideration of divine piety*] his office and benefice, are not to trouble him further concerning this, [*because just as it is just, etc.*]

Chapter IX

Latin source headnote: On account of the erasure of a few letters in an unsuspected place, a rescript is not proved false.

The same.

From the contents [*of the letters of the beloved sons, the Abbot of Holy Cross of Waltham and Master Simon of Svelle, it became known to us that, when formerly the question pending between the beloved sons M. Phil. of Ludeleve on the one side and the clerics Robert and Vincent on the other concerning the church of Streton had been committed to them and to the late Abbot of Stratford by Pope C. of good memory, our predecessor, and that same abbot and the aforesaid Vincent had alike been taken from this light, the two aforementioned judges, proceeding according to the tenor of the apostolic rescript, heard more diligently the attestations and allegations of each party. At length, when each party had renounced further proof before them and a definitive sentence was to be promulgated according to the allegations against Master P., the opposing party impugned the apostolic letters as false and steadfastly asserted that it would prove them false at the peril of the case, imposing the law upon itself that it would fall from the case unless it proved the falsehood more evidently; and, lest the judges proceed further in the case, it appealed to the Apostolic See. But when the often-mentioned Phil. produced the man through whom he had obtained the letters and firmly promised that he would prove them genuine, the aforesaid R., having been required by the same judges to express some mark of falsehood on account of which he alleged that the letters were false, wished to specify nothing else except that he called them false and asserted that they had by no means issued from our chancery. But the aforesaid judges, after receiving from R. himself sworn security that he would prosecute the accusation of falsehood as was expressed above, fixed for each party, as the term for prosecuting before us the appeal interposed, the day following the recently past Sunday on which "Rejoice, Jerusalem" is sung. But the aforesaid Robert, coming to our presence at the appointed term, after suppressing the truth concerning the falsehood of the letters and the course of the business (as is said), obtained letters from us addressed to the aforesaid judges and, proposing absolutely nothing concerning the accusation of falsehood, furtively withdrew from the Apostolic See.*]

But *we*, examining more diligently the letters themselves that had been impugned as false, found in them no sign of falsehood or of suspicion except the erasures of a few letters, which ought by no means to have turned the mind of a wise man to doubt. Wherefore [*by apostolic writings we command your discretion that you inquire more diligently into the truth concerning these matters, and,*] if it shall be established to you [*that the already-mentioned letters were obtained from us with the truth suppressed, and*] that the aforesaid R. bound himself at the peril of the case to prove that those letters were false, since [*a personal question is litigated between him and his adversary and*] anyone has free faculty to renounce his right, you are to impose silence upon that R. concerning the said church. [*Otherwise, after the parties have been summoned, etc. Given at the Lateran on the thirteenth day before the Kalends of November,* 1198.]

Title XXI: On Sorceries

Chapter I

Latin source headnote: Sortileges for discovering future things or making divinations are prohibited, and a penalty is imposed upon those acting contrary to this.

From the Penitential of Theodore.

Thefts are not to be sought by lot in tablets, books, or other things, *nor is anyone to cast lots in a psalter, the Gospel, or other things*, nor is anyone to presume to observe any divinations in any things. But one who shall have acted contrary to this is to do penance for forty days.

Chapter II

Latin source headnote: A priest who seeks thefts through inspection of an astrolabe is suspended from the ministry of the altar for a time. It is commonly summarized thus; but in truth this summary is not unqualifiedly true, because he can be punished more severely.

Alexander III, to the Patriarch of Grado.

We learned from the tenor of your letters that the priest V., *the bearer of the present letters, making use of youthful levity*, went with a certain infamous man to a private place, *intending to invoke an unclean spirit. Wherefore you suspended him from ecclesiastical office and benefice, because on this account he labored under ill repute and the crime was public and notorious. But he proposed to us by word of mouth that* he had *gone* not with the intention of summoning a demon, but so that by inspection of an astrolabe the theft from a certain church could be recovered. But although he alleges that he did this from good zeal and *from* simplicity, it was nevertheless exceedingly grave, and from it he contracted no small stain of sin. *But because it is safer to incline toward the right than* [*toward*] *the left, and toward mercy than toward severity, we have decided that he should be sent back to your fraternity.* We command that *within eight days after receipt of these letters you restore to him the church with everything taken away, and* impose upon him for expiation of that offense such a penance that for one year and longer, if it shall seem good to you, *yet in such a manner that it does not exceed two years*, you command him to abstain from the ministry of the altar, and that thereafter he be free to exercise the priestly office.

Chapter III

Latin source headnote: Not only ought an election not to be made by lots, but neither ought electors by compromise to be selected by lots.

Honorius III, to the Chapter of Lucca.

Your church having *recently* been deprived of a bishop, *as we have learned*, you, assembling as one in order to treat concerning the election of a future pontiff, *having begun to hold diverse discussions concerning the manner of election, at length* elected by lot one of yourselves, who by your authority elected three through whom, in place of all, a pastor should be provided for the church of Lucca. Two of these elected the third, namely Master R., which was expressly lawful for them according to the power delivered by you all. Therefore, when your proctors appeared before us concerning these matters, we, after examining such a process, although it does not lack a blemish—indeed, it is worthy of much reprehension that a lot intervened in such matters—*nevertheless, on account of the prerogative of morals and learning of Master R., your canon, upon whom the votes of your church concurred for his appointment as bishop, and the affection that we have for that same church*, admit the election celebrated concerning him to the favor of confirmation, condemning the use of lots in elections by a perpetual prohibition.

Title XXII: On Detecting Collusion

Chapter I

Latin source headnote: When an accuser desists from an accusation, a judge can by virtue of his office inquire into the crime charged.

Gregory, to All the Bishops of Corinth.

Reading over the writings of your fraternity, we learned that those who had said certain things against Bishop Hadrian had now come into friendship with the same *bishop, and at present great joy has been produced for us by their unity. But because we do not permit the things that were said to remain unexamined, we direct a deacon of our see to investigate them.* But because the character of the reported crime vehemently impels us so that we ought by no means to dissemble the things that we heard, especially since you indicated that the accusers and the accused made peace with one another, it is necessary for *us* to investigate this more subtly, lest perhaps their concord was purchased not from charity but from a reward.

Chapter II

Latin source headnote: When the accuser and the accused desist, the judge prosecutes.

The same.

Gregory in no way passed over crimes once heard without examination, even if the accused had returned to favor with the accuser.

Chapter III

Latin source headnote: One who colludes in a benefice case ought to be deprived of the benefice.

Alexander III, to the Bishop of Norwich.

We have heard that, *in your episcopate and in other episcopates of England*, the malice of clerics has increased to such an extent that sometimes, after collusion has been made among themselves concerning benefices that they possess, they cause themselves to be troubled by others, and afterward, so that the question may be yielded and those same clerics may possess the benefices in quiet, they pay others an annual pension from *those* benefices as if in the name of a settlement, so that after their deaths they may be able to claim a right in those benefices concerning which collusion was made *among those same clerics*. Wherefore, [*because*] *you wished to consult us as to what* is to be done by *you* concerning this, *by apostolic writings and by way of precept* we command your fraternity that, if it shall have been lawfully established to you that any clerics of your jurisdiction have committed fraud through collusion of this kind, you do not delay, *with appeal removed*, perpetually to despoil them of the benefices concerning which collusion was made, because it would be sufficiently unworthy *and absurd* if the fraud and deceit that they endeavor to commit to the prejudice of your right and that of others did not rebound to their disadvantage and loss.

Chapter IV

Latin source headnote: An absolution from charges of crimes, made through collusion, does not impede the faculty of accusing again and inquiring concerning those crimes.

Gregory IX, to the Archbishop of Bari and Brother Joseph, a Florentine Monk.

The outcry that rises against the Archbishop of Acerenza grows to such a degree that we can no longer dissemble it without scandal or tolerate it without danger. (*And below:*) Although the Apostolic See, aroused by frequent outcries, decided that an inquiry into certain of his offenses should be committed, nevertheless, on account of his evasions, as is said, the same man colluding with the investigators and examiners, and also the witnesses and the aforesaid investigators and examiners having been corrupted, not only have the aforesaid offenses thus far remained uncorrected, but he did not fear to commit worse things than the former. (*And below:*) We command your discretion that, if collusion and corruption of this kind shall be established, you inquire anew concerning the aforesaid and other matters, but otherwise concerning new matters only, which you shall see ought to be investigated.

Title XXIII: On the Offenses of Children

Chapter I

Latin source headnote: Minors below puberty can commit offenses apart from the vice of the flesh; nevertheless, they are punished more mildly than adults.

Gregory.

Certain persons are unwilling to attribute sin to older children before the age of fourteen, when they begin to reach puberty. We would deservedly believe this if there were no sins except those that are committed with the genital members. But who would dare to affirm that thefts, lies, and perjuries are not sins? Yet childhood is full of these, although in children they appear not to be punishable in the same manner as in adults.

Chapter II

Latin source headnote: A boy ought not to be punished as severely as an adult, nor is a father held for the offense of his son below puberty.

Alexander III, to the Bishop of Hermon.

From the report of H., *the bearer of the present letters*, we understood that, when his son, *who was* ten years old, was shooting arrows with other boys, a certain nephew of the same H., struck by an arrow, died. The same son is said to have done this by an accidental event while he was playing among the others, *although this is held uncertain*. On account of this *our beloved son*, the Abbot of Saint Remigius, was urgently demanding one hundred solidi from the aforesaid H. according to the custom of that land. (*And below:*) Wherefore, because in boys that is customarily left unpunished which human laws say is to be corrected more severely in others of more advanced age, *by apostolic writings and by way of precept* we command your fraternity that *you inquire more diligently into the matter itself, and*, if *it shall be established to you* that the son of the aforesaid H. committed that offense before the fourteenth year of his age, you admonish the aforesaid abbot and, *with appeal removed, by our authority* compel him not to exact the aforesaid one hundred solidi from that H. on account of that custom, nor to seek them from him as a temporal penalty. *But if the aforesaid abbot shall decide, after your admonition, to proceed against him*

concerning this, relying upon our authority you are to absolve Haide and his son from his proceeding, with the remedy of appeal removed.

Title XXIV: On a Cleric Who Hunts

Chapter I

Latin source headnote: Hunting is prohibited to a cleric, and a penalty is imposed upon one acting contrary to this. It says this together with the following chapter.

From the Council of Orléans.

It is not lawful for a bishop, priest, or deacon to possess dogs, hawks, or *things* of this kind for hunting. But if anyone among such persons shall have been detained more frequently in this pleasure, if he is a bishop, let him be *suspended* from communion for three months; if a priest, for two; if a deacon, let him be suspended from every office.

Chapter II

Latin source headnote: It is summarized in the immediately preceding chapter.

From the same council.

We forbid all servants of God hunts and woodland wanderings with dogs, and hawks or falcons.

Title XXV: On a Cleric Who Strikes

Chapter I

Latin source headnote: A cleric who repeatedly strikes another and does not desist after admonition is to be deposed.

From the Council of Agde.

If anyone in any sacred grade shall have been a striker, let him be corrected from the crime; and if he shall not have amended himself, let him be deposed.

Chapter II

Latin source headnote: A bishop who causes someone to be cruelly beaten is suspended from the administration of masses for two months.

Gregory, to the Bishop of Taranto.

Furthermore, because, contrary to the order of the priesthood, you appointed that a woman *of the matriculae* be cruelly beaten with clubs on account of her offense—although, since she died after eight months, we by no means judge that she died from it—nevertheless, because you were unwilling to have regard for your order, *therefore* we establish that you are to abstain from the administration of masses for two months, [*during which, suspended from your office, it is fitting for you to lament what you did, etc.*]

Chapter III

Latin source headnote: A cleric is not punished as a killer if he was himself in a conflict on the side of those repelling violence, although some persons died there and he himself threw stones, by which he himself struck no one.

Alexander III, to the Bishop of Lucca.

The bearer of the present letters asserts that he was in a certain conflict, yet on the side of those who were repelling violence; in it he himself threw stones, but struck no one. Because some are said to have been killed there by others, we command him to abstain from the celebration of masses for two years. We therefore command that, if *the matter shall so have occurred and* other matters do not impede, when the period of time of this kind has elapsed, you admit him to the exercise of his office.

Chapter IV

Latin source headnote: A cleric who was in a conflict in which certain persons were killed without his deed or counsel can be promoted by the common law. It says this according to the second understanding, which pleases Panormitanus more.

Celestine III.

After the contents of *your* letters *had been inspected, by which you informed us that*, When P., an acolyte *bearing the present letters*, had taken up arms with certain *men* to resist robbers, in that conflict three were wounded unto death by others, yet in such a manner that those homicides were perpetrated neither by his deed nor by his counsel. We respond thus to your consultation: since you say that the aforesaid acolyte has passed to the fruit of a better life *and has lived laudably in monastic religious life for almost eight years up to this time, provided his merits do not otherwise oppose*, he can be promoted to the order of subdiacon and *deservedly* exercise the ministry of the altar.

Title XXVI: On Those Who Utter Curses

Chapter I

Latin source headnote: One who curses the Pope is to be punished so that others may henceforth be deterred and he himself restrained.

Clement III.

It became known to us. (*And below:*) *Lastly, we command and enjoin upon your fraternity that*, Because you reported to us through *your* letters that the cleric I. *of the Holy Trinity*, in the presence of many bystanders, uttered certain words to the disparagement of our office and benefice, you restrain him from his rashness *through suspension from office and benefice, with the obstacle of appeal removed*, so that his punishment may strike terror into others, lest henceforth they burst forth into such words against the Roman Church.

Chapter II

Latin source headnote: Here is laid down the penalty of one blaspheming God or any saint, and especially the most glorious Virgin.

Gregory IX.

We decree that, if anyone shall have presumed publicly to loose his tongue in blasphemy against God, or any of his saints, and especially the blessed Virgin, he is to be subjected by his bishop to the penalty noted below: namely, for seven Sundays the blasphemer is to stand openly before the doors of the church while the solemnities of masses are conducted; on the last of those Sundays he is to have neither cloak nor shoes and is to be bound with a strap around his neck; and on the seven preceding Fridays he is to fast on bread and water, in no way entering the church. On each of the aforesaid days he is also to feed three poor persons, if he can, otherwise two or one. And if his means do not suffice even for this, it is to be commuted into another penance. If he shall refuse to receive and complete the aforesaid penance, entrance to the church is also to be forbidden to him, and at death he is to lack ecclesiastical burial. Furthermore, through the temporal power, with coercion by the diocesan bishop employed against him if necessary, the blasphemer, if rich, is to be chastised by a penalty of forty solidi of current money, otherwise thirty or twenty, and, if he does not suffice for this, five solidi, having no mercy in this; and this is also to be placed among the other statutes of communities.

Title XXVII: On an Excommunicated, Deposed, or Interdicted Cleric Who Ministers

Chapter I

Latin source headnote: A deposed cleric who celebrates is excommunicated.

From the Canon of the Apostles.

If any bishop, priest, or deacon, justly deposed for certain crimes, shall have dared to handle again the ministry formerly committed to him, let him be cut off *entirely* from the Church.

Chapter II

Latin source headnote: A degraded or suspended cleric who celebrates and does not desist after admonition is excommunicated; and if he does not desist even thus, at the Church's request he is condemned to exile through the secular power.

From the Council of Antioch.

If any priest or other cleric *shall have been degraded by his bishop* or suspended from office for certain crimes, and through contempt and pride he presumes to perform anything from the ministry forbidden to him, and afterward, having been corrected by his bishop, persists in the presumption begun, let *him* be excommunicated in every way *and expelled from the church*. And whoever shall communicate with him is likewise to know himself excommunicated. The same is to be observed concerning excommunicated clerics, laymen, or women. But if anyone shall have contemned all these things and the bishop shall have been unable to amend him, at the Church's request let him be condemned to exile by the king's judgment.

Chapter III

Latin source headnote: An interdicted and excommunicated cleric who celebrates and does not desist after admonition is deposed.

Alexander III, to the Bishop of London.

But if any clerics shall have been interdicted or excommunicated by their own bishops, or even at the command of the Roman Pontiff by other bishops, [*and*] shall have celebrated divine offices before absolution, unless after admonition they return without delay, let them incur the sentence of perpetual deposition for the venture of so great a rashness.

Chapter IV

Latin source headnote: Excommunicated or interdicted clerics who celebrate ought to be deposed, unless the penalty is mitigated on account of their multitude.

The same, to the Archbishop of Toledo.

The bearers of the present letters, *coming with your letters to our presence, informed* us *more fully of their offense, namely*, that both they and many others, after they were interdicted or excommunicated, presumed to celebrate divine offices. *But because they said that a great multitude sinned with them in this, and it could not become known to us which of them transgressed more or less, we decided that the business itself should be committed to the judgment of your discretion. By apostolic writings and by way of precept* we command your fraternity that, *after more diligent inquiry into the truth of the matter*, if it shall be established that only forty or fewer transgressed in these matters, you depose all of them perpetually from the priestly office. But if you shall know that a great multitude sinned in this, you are to condemn by perpetual deposition those who shall have been established to be more the cause of the offense, suspend for a time from office the others who did not transgress so greatly, and impose penance upon all according to the discretion given to you by God.

Chapter V

Latin source headnote: If one who has knowledge of an excommunication through report alone celebrates, by rigor he ought to be deposed, although a merciful dispensation can be granted to him. It says this, and it is a notable case.

Innocent III, to the Chapter of Würzburg.

The Lord granted to blessed Peter [*in whose dignity of the apostolate we, although insufficient, have succeeded, the privilege of a singular prerogative for the Roman Church: that it exist as the head and mother of all the faithful, so that a member which has not persisted in its unity is foreign to that body concerning which the Apostle says, "we are all one body in Christ"; nor does one who has not had it as mother and teacher belong to that fold concerning which it is read in the Gospel, "there shall be one fold and one shepherd." We also, who by God's ordering have been called to its governance, although in life we are unequal and in merits unlike our first predecessors, who laid down their lives for the Church, nevertheless by the same privilege exercise equal power with him, since we read that it was said by the Lord: "Whatever you shall bind upon earth shall be bound also in heaven, and whatever you shall loose upon earth shall be loosed also in heaven." Although, moreover, the Apostolic See, considering human imperfection and the gravity of the burden enjoined upon it, has summoned many to a share of the solicitude committed to it, it nevertheless retained for itself the fullness of power, reserving many things to its power alone which, apart from its special authority, by law neither ought nor can be dispensed by any persons with impunity, such as the resignations and translations of bishops and certain other matters which, since they are known, there is no need for us to explain in letters.*]

Our venerable brother [*Conrad*], formerly Bishop of Hildesheim, *chancellor of the imperial court, not considering that there are many things which, apart from the special authority of the Apostolic See, by law neither*

could nor ought to be attempted by any persons with impunity, such as the resignations and translations of bishops and other matters known to you, having not only failed to obtain permission but not even sought it, left the church of Hildesheim and occupied the church of Würzburg, [*and thus in the letters that he sent us he presumed to call himself Bishop of Würzburg*]. Wherefore *we, wishing to punish his presumption with due correction, gave commands to our venerable brother* the Archbishop of Magdeburg *and certain others established in Germany* that, since the fact itself could not fail to be notorious in those parts, unless the said bishop ceased from the administration of the church of Würzburg within twenty days *after receipt of the letters that we directed to him concerning this*, they were publicly to announce him as excommunicated *and cause his excommunication to be renewed with bells rung and candles lit on feast days and Sundays*. The same Archbishop of Magdeburg took care to fulfill this.

[*Although in manifest matters the judicial order did not need to be required, and he appeared to have confessed concerning himself, since in letters directed to us he presumed to call himself Bishop of Würzburg, nevertheless, in order to overcome every malice, we again commanded him, without first giving a salutation, that, with every pretext ceasing, if he wished to find favor with us, he was to fulfill the apostolic mandate. When he nevertheless persisted in his contumacy and, after another had been elected and confirmed in the church of Hildesheim by our mandate, presumed to call himself Bishop of Hildesheim, lest the Apostolic See appear to dissemble, we announced him excommunicated amid the solemnities of masses and commanded that he be avoided by all. But at length, recognizing his own rashness, first before the aforesaid archbishop and many princes of Germany, and second before our venerable brother C., Archbishop of Mainz and Bishop of Sabina, and many princes, he affirmed by oath that he would obey apostolic commands. Thereafter, neither avoiding the dangers of the roads nor intolerant of the inconveniences of the season, he came to the Apostolic See and, voluntarily confessing his offense in great contrition of heart and great humility of body, sought the benefit of absolution. But we, following the example of him who does not wish the death of the sinner but rather that he be converted and live, because he swore by every compact and tenor that he would in good faith receive and observe all our commands, whatever we should tell him by way of imposing things upon him concerning those matters for which he had been excommunicated by us, through our messenger, or through letters, afterward caused the benefit of absolution to be furnished to him.*]

But the bishop himself, afterward appearing in our presence, although he acknowledged and confessed his offense and sought not judgment but mercy, [*introduced certain things in his own excuse, yet in such a manner that he neither departed from the form of humility nor relied upon the reasons introduced to such an extent that he did not always condemn what he had done, and, while excusing himself, voluntarily accused himself. He appeared, moreover, to have transgressed more particularly in three things.

First, namely, in that, apart from our special authority, he presumed to pass from the church of Hildesheim to the church of Würzburg, something he could not do by law, and after another had been elected and confirmed in the church of Hildesheim by our mandate, he named himself Bishop of Hildesheim.

Second, namely, in that, after the said Archbishop of Magdeburg had promulgated against him by our mandate a sentence of excommunication, he presumed to celebrate divine offices in a solemn court; and after he knew himself excommunicated by us, he repeatedly caused celebration to be held for himself and frequently thrust himself into communion.

Third, that, although he pretended to cease from the administration of the church of Würzburg, he nevertheless never withdrew fully from it, since, when questioned by us, he confessed that he still

detained the temporalities.

But the same bishop wished to excuse himself concerning the first point in this manner: that he had passed to the church of Würzburg by special apostolic authority, since Celestine, Pope of good memory, our predecessor, had decided to grant him permission to pass to another church. But, considering more diligently the words of that indulgence and their force, he had from it no cause for passing before the postulatio had been examined by the one by whom it was to be made, lest perhaps anything be done through pressure, anything be transacted through simoniacal depravity, or anything contrary to canonical sanctions be capable of being attempted. This is sufficiently clear from the tenor of the indulgence, in which it is added near the end: "provided that it does not oppose canonical statutes." Furthermore, although it appeared to have been granted to him that, when invited, he might assume a greater dignity, it was nevertheless not granted to him that he should transfer himself to a church of equal dignity, since it is a greater indulgence for a bishop that he pass to an equal church; much more, we have never found this dispensed. But it is established that the churches of Hildesheim and Würzburg, insofar as dignity pertains, are equal, since each is a suffragan of the church of Mainz; for although Würzburg is richer in temporalities, Hildesheim is nevertheless reported to be nobler in spiritualities.*]

Nevertheless, among other things in his excuse, he proposed that, since the said Archbishop of Magdeburg was not his ordinary judge, he had not believed that, without prior admonition, he could proceed against him by delegated authority or promulgate any sentence against him. Wherefore, since neither before the fact had he received letters of admonition nor after the *fact* any letters from him, he did not believe that he sinned if he celebrated divine offices however solemnly, especially since the sentence pronounced against him was known to him only through report. *But he asserts that, after he knew himself excommunicated by us, he caused divine offices to be celebrated for him and frequently thrust himself into the communion of the faithful not in contempt of the Apostolic See or even of so great a sacrament, but in hope of pardon, namely lest he become more hardened or his mind behave more stubbornly if he were never present at divine offices; although on solemn days he never thrust himself into the celebration of divine offices, but with a few persons, secretly in a corner of some church on non-festal days, he sometimes caused divine offices to be celebrated for him.*

Although in this he does not appear to have been entirely culpable, nevertheless, because in doubts the safer way is to be chosen, even if he doubted the sentence rendered against him, he ought rather to have abstained than to handle ecclesiastical sacraments. But that, in hope of pardon, after he knew himself excommunicated by us, he caused divine offices to be celebrated for him and thrust himself into the communion of the faithful, we believe to work against him rather than for him, since he ought not to have transgressed in reliance upon penance; and for an excommunicated person not to avoid others is much more dangerous than not to be avoided. Indeed, since not avoiding lies within his own power, an excommunicated person cannot fail to sin; but since not being avoided depends upon others, he can be not avoided without sin of his own.

[*He asserted that he had held the fortifications and towns of the church of Würzburg for its utility, lest, if perhaps they came into foreign hands, there would afterward be no one to free them. But since spiritual things are worthier than temporal things, obedience better than victims, and listening better than offering the fat of rams, the same bishop ought not, for the temporal advantage of the church of Würzburg, to have incurred the mark of disobedience and resisted apostolic commands. Considering, therefore, that the Lord does not wish the death of the sinner, lest we*

appear unmindful of the benignity of the Apostolic See, we decided that mercy should be shown to the same bishop in certain things. But because the same merciful Lord—if the one is held without the other—and because there are also certain faults in which, according to canonical sanctions, it is culpable to relax punishment, we therefore tempered mercy through discipline and discipline through mercy, so that we might punish the offenses committed by the same bishop in such a way that we would not compel him to despair of pardon. Therefore, when he had been placed publicly in the consistory in our presence and that of our brothers, following the canonical sanctions in which it is provided that those who transfer themselves to a greater people ought both to be driven from the other's chair and to lack their own, so that they preside neither over those whom they despise through pride nor over those whom they covet through avarice, we caused him by sentence to be despoiled both of the episcopate of Würzburg and that of Hildesheim.]

Showing mercy to him, we decided not to inflict upon him the penalty that the canon inflicts upon those who, after excommunication, presumed to celebrate divine offices, or *who* thrust themselves into the celebration of divine offices. [*We therefore commanded, etc. Given at the Lateran on the fifth day before the Ides of April, in the second year,* 1200.]

Chapter VI

Latin source headnote: An excommunicated cleric who celebrates is deposed from his benefice.

The same, to the Archbishop of Besançon.

To your fraternity. (*And below:* [*cf. c.* 7, *On One Who Has Known His Wife, IV.* 13.]) But priests and other clerics *of your diocese* who, having been canonically bound by you with the bonds of anathema for their offenses, presumed or presume to celebrate divine offices, you will reasonably be able to despoil of all ecclesiastical benefices. [*The prior, etc. Given at Ferentino on the twelfth day before the Kalends of June, in the sixth year,* 1203.]

Chapter VII

Latin source headnote: A collation of a benefice made to an excommunicated person is not valid, and one knowingly conferring upon such persons is suspended from the collation of benefices. — (*You Asked, etc.*:) One who celebrates in an interdicted place, if a secular cleric, is deprived of benefices; if a monk, he is thrust into a stricter monastery. It says this.

The same, to the Dean and Prior of Cologne.

You asked to be instructed through the Apostolic See. (*And below:*) *Consequently, you also asked whether clerics who, while they were bound by the bond of excommunication, obtained ecclesiastical benefices can lawfully retain them after they have obtained the benefit of absolution, petitioning nevertheless* [*that it be explained through the Apostolic See*] *by what penalty abbots and abbesses and other prelates of churches who knowingly conferred ecclesiastical benefices upon clerics subject to excommunication ought to be corrected. To these matters* We respond to your consultation that, since communication ought not to be held with excommunicated persons, ecclesiastical benefices cannot be conferred upon clerics bound by the bond of excommunication, nor can they lawfully retain them unless perhaps a merciful dispensation shall have been granted to them, since they did not obtain them canonically. But those who knowingly conferred those benefices upon such persons ought to be suspended from the collation of benefices until they deserve to obtain pardon concerning this, so that they may be punished in that in which they presumed to transgress. You asked further how clerics *and* monks or nuns of conventual churches ought to be punished who,

after a sentence of interdict had been rendered, presumed thus far, and even now do not fear, to celebrate divine offices in places subjected to interdict, although on account of this they are bound by the bond of excommunication. To this we respond briefly that clerics who presumed such things are to be despoiled of ecclesiastical benefices, but monks or nuns are to be thrust into stricter monasteries to complete penance. [*Furthermore, etc. Given at the Lateran on the Ides of May, in the tenth year,* 1207.]

Chapter VIII

Latin source headnote: A collation of a benefice made to one who was previously excommunicated is valid if he was absolved at the time of the collation.

The same, to the Dean and Subdeacon of Poitiers and Master P., a Canon of Périgueux.

The beloved son Master P. [*Boiol*], a cleric of *our venerable brother* the Bishop of Tusculum, *formerly* proposed before us that, when *the beloved son* G., cardinal deacon of Saint Mary in Portico, was exercising in those parts the office of legation of the Apostolic See, certain persons among the *canons* of Limoges humbly entreated him to set in order their church, which was defrauded of the due service of clerics, presenting special entreaties on behalf of themselves and that same master, *our scribe*. But he, entering the city of Limoges, admonished the canons *with entreaties interposed* to receive them as associates and brothers, especially since five or four prebends had been vacant since the last ordering of that church. When they did not take care to respond after delays for deliberation had been sought and granted, the aforesaid cardinal invested those same clerics with a prebend of Limoges. (*And below:*) *But if he should prove that the man was excommunicated at that time, they were not to postpone revoking what had been done concerning him. They, executing the apostolic command, after receiving witnesses from each party and understanding the confessions and allegations, sent that case, sufficiently instructed, to our examination.* But when the said master and the penitentiary of Limoges appeared in our presence and we caused the acts of the trial to be inspected diligently, through the penitentiary's witnesses we understood *proof to have been made* that the Bishop of Limoges, several years before the same master was invested, had bound with the bond of excommunication both the clerics and townspeople of the castle of Limoges and the same P. by name, whom they said was their counselor and supporter. But through the witnesses of Master P. it was proved that, although the said bishop had pronounced a sentence of excommunication against the townspeople and their supporters, clerical as well as lay, of Limoges, he nevertheless absolved them three years before the said master was invested, *certain priests having been retained in excommunication until a fixed time because they had presumed to celebrate contrary to a sentence of interdict*, and that afterward the same bishop communicated with the said master in church and at table. But because, *according to the tenor of our mandate*, the said penitentiary did not prove, as he had offered, that the often-mentioned Master *P.* was excommunicated by the aforesaid bishop at the time of his investiture, while, on the contrary, proof was made of absolution and communication by the said bishop, we decided, *on the counsel of our brothers*, that what was done by the said legate concerning the aforesaid Master *P.* should be approved by definitive sentence. [*Therefore, etc. Given at the Lateran on the sixth day before the Kalends of February, in the thirteenth year,* 1210.]

Chapter IX

Latin source headnote: A suspended or excommunicated person who celebrates in ignorance needs no dispensation with respect to irregularity; otherwise it is otherwise.

Gregory IX, to I. and I., Canons of Prague.

Of the Apostolic See. (*And below:*) But because in ignorance you celebrated divine offices during the suspension, probable ignorance renders you excused. But if perhaps the ignorance was gross and supine or erroneous, on account of which you need the favor of dispensation, we grant it to you from apostolic benignity. [*Given on the tenth day before the Kalends of May,* 1227.]

Chapter X

Latin source headnote: One who celebrates while under minor excommunication is not irregular, but sins, and can elect and exercise those things that belong to jurisdiction, although he cannot be elected; and if he confers sacraments, although he sins, nevertheless the conferral is valid and has its effect.

The same.

If one celebrates while bound by minor excommunication, although he sins gravely, he nevertheless incurs no mark of irregularity, nor is he prohibited from electing or from exercising those things that belong to him by reason of jurisdiction. Nevertheless, if such a person shall knowingly have been elected, his election is to be annulled for the reason that he is elected to receive those things from whose reception he was deprived by the holy Fathers. He sins, moreover, by conferring ecclesiastical sacraments; but those conferred by him do not lack the effect of their power, since he does not appear removed from the conferral but from participation in the sacraments, which consists in reception alone, provided that he has not, in contempt of ecclesiastical discipline, namely contrary to the prohibition of his superior, pertinaciously thrust himself into communion with excommunicated persons, in which case he is to be struck with anathema.

Title XXVIII: On a Cleric Who Ministers Without Being Ordained

Chapter I

Latin source headnote: A cleric ministering in matters belonging to an order that he does not have is to be deposed and is not afterward to be ordained.

Pope Hormisdas.

If anyone who has not been ordained shall baptize or exercise any divine office, on account of his rashness let him be cast out of the church and never be ordained.

Chapter II

Latin source headnote: A deacon who celebrates mass is not promoted to the priesthood and is suspended from the diaconate for a time; but concerning his benefice a dispensation can be granted for a time.

Urban III, to the Bishop of León.

It became known to us from the letters of your fraternity that the deacon I., *the bearer of the present letters, wishing to be ordained priest before the proper time, asserted that he had obtained the sacerdotal grade through your ordination, and,* although you had not imposed your hand upon him, presumed to usurp the celebration of masses. *Afterward, however, at the Lord's inspiration, he returned to himself and, recognizing*

his own offense, humbly petitioned that counsel be given to him in so great a danger. Therefore, because concerning this your fraternity led us to be consulted, by the present letters We respond to your consultation that he cannot be promoted to the priestly office; and according to your provision, let him remain suspended from the diaconate for two or three years. But let him be treated mercifully concerning his benefice, lest, deprived of sustenance, he return to the business of the world. But so that you can show him this mercy more securely, do not cease to exhibit diligent care concerning him for completing the *imposed* penance. Without doubt, however, he will provide more healthfully for himself if he shall decide to transfer himself to the regular life.

Title XXIX: On a Cleric Promoted by a Leap

Sole Chapter

Latin source headnote: One who in ignorance is made a priest by a leap from subdeacon, after penance is ordained deacon, and afterward a dispensation can be granted to him in the priesthood.

Innocent III, to the Bishop of Bologna.

Your letters *presented to us* contained that, as you had learned from the report of certain *good men*, the priest P., *the bearer of the present letters*, having omitted the order of the diaconate, caused himself to be promoted to the order of the priesthood; *and when you had inquired more diligently from him concerning the truth of this*, he also secretly and *humbly* confessed to you that he did not know for certain whether the matter so occurred, but, since good men among whom he had lived asserted this, he believed their assertion, because *he himself*, at the time when he received the lower orders, was below the years of discretion. *You therefore, sending him to the Apostolic See, humbly petitioned us that we deign to act mercifully with him. We, therefore, grieving with his misery, by apostolic writings* Command your fraternity that you impose upon him a fitting penance for negligence of this kind. When it has been completed, because that which is not known to have been done is not understood to be repeated, you are to take care to ordain him deacon, and thus by mercy permit him to minister in the order of priest. [*Given at Rome at Saint Peter's on the twelfth day before the Kalends of February,* 1205.]

Title XXX: On One Who Secretly Received an Order

Chapter I

Latin source headnote: One who secretly receives an order, if an excommunication had been rendered against persons doing this, cannot minister in the order thus received or ascend to a higher one without a dispensation of the Pope; but if an excommunication had not been rendered, the bishop and abbot will be able to dispense. It says this together with the following two chapters.

Alexander III, to the Bishop of Langres.

P., *the bearer of the present letters*, coming to us, explained to us that, *having been circumvented by the cunning of the ancient enemy*, he secretly received the order of the diaconate. Wherefore we respond to your fraternity that, if *perhaps* he was not prohibited by you, or by any of your archdeacons or prelates, under threat of anathema, you yourself, after fitting satisfaction has been imposed, may at your judgment dispense for his promotion to the priestly office, unless other matters impede. But if a threat of anathema was made concerning this, you are to admonish him, *as we too have done*, to receive

the regular habit in some monastery or house of canons. *According to the admonition*, after he has lived laudably in that habit for some time, you will be able to provide for him mercifully; otherwise, by no reason do we grant that he be promoted to the priestly order.

Chapter II

Latin source headnote: It is summarized in the immediately preceding chapter.

Celestine III.

When H., the bearer of the present letters, as he showed us by his inquiry, came to your presence for the purpose of ordination, you conferred upon him the four minor orders according to the custom of the country. Not content with these, with a rash venture he also received the subdiaconate [*on that same day, hiding among others without your knowledge, and the diaconate*]. But because the same cleric transgressed greatly in this deed, we command that you permit him to celebrate only in minor orders. But if he shall enter a religious house and his life and morals shall require it, his *abbot*, if he wishes, will be able [*also*] to dispense *with him* in the other orders.

Chapter III

Latin source headnote: It is summarized in the first chapter above.

The same.

It became known to us *from the tenor of your letters* that the cleric G., *the bearer of the present letters*, and two others from your diocese went to G., formerly Bishop of Sigüenza, to receive orders from him. And although it had been prohibited by that bishop under sentence of excommunication that anyone thrust himself forward to receive two orders, the aforesaid clerics nevertheless secretly received the orders of subdiaconate and diaconate. *Therefore, because concerning what is to be done by you for them your fraternity led us to be consulted,* We respond thus to your consultation: those *thus* ordained ought not by rigor of law to minister in the orders received. Nevertheless, if they wished to transfer themselves to any religious life, and, after completing a penance imposed upon them at your judgment, shall have lived laudably there, in the course of time you will be able by our permission to dispense with them so that afterward they may rejoice in exercising the orders received. *Furthermore, on behalf of the aforesaid G., because he labored in his own person, we more attentively entreat and admonish your fraternity that you cause him to be received as a brother into the house of canons regular of Saint P. of Semina or another religious place, where he may lament his offense, so that, if you shall see his merits supporting him while he lives regularly there, you may grant him the faculty of ministering, as we have said.*

Title XXXI: On the Offenses of Prelates and Subjects

Chapter I

Latin source headnote: It admonishes prelates to abstain from burdens upon subjects, enumerates some of them, and imposes a doubled penalty upon those acting contrary to this.

Alexander III.

It has come to our hearing, *wherefore, if it is true, we wonder greatly and are moved against you by law, that each year you impose a tallage upon the priests established in your jurisdiction as if upon servants and hirelings;*

unless they pay money according to your will, you interdict them from divine office, and you treat them cheaply and dishonorably to such a degree that you have rendered them contemptible to laymen. But since you ought to cherish priests as sons and brothers with benign and fraternal charity, we command that you in no way presume to exercise tallages of *this kind* and undue exactions against them, nor henceforth burden them unreasonably or treat them dishonorably, or attempt without the judgment of *their* chapter to suspend them or subject their churches to interdict; nor are you to permit them to hold two *mother* churches, of which you shall see that one suffices [*for them*]; nor are you to presume to excommunicate anyone without judicial order. You are to know for certain that, if reports of this kind concerning you should again come to our ears, *with the Lord as author* we shall punish you for so great offenses in such a manner that, from fear of your punishment, others will abstain from like things.

Chapter II

Latin source headnote: A bishop cannot without cause free a church subject to another from that person's subjection and service.

The same, to the Archbishop of Canterbury.

In addition, because the *aforesaid* bishop, *as we have learned*, has established several churches, *and especially the church of Nortun.*, as free and immune from the custom and service of the archdeacons, through which he diminished *and reduced* their revenues, nevertheless, by this present communication we command you that, *if the matter so occurred*, you correct and amend the bishop's action concerning this *with appeal removed*, and so provide that the customs that the priests in the churches of their archdeaconries owe to the aforesaid archdeacons be fully preserved, and that they exhibit to them the due reverence and honor.

Chapter III

Latin source headnote: One who has subjection or the collation of a benefice cannot retain it for his own use or confer it upon himself.

The same, to the Bishop of Exeter.

It has come to our ears that certain archdeacons do not fear by their own authority to intrude themselves into churches in their archdeaconries that are vacant, *and thus are not ashamed to detain those churches. Therefore, considering the offense of so great a presumption to be absurd and contrary to every principle of reason, and being unwilling to leave it uncorrected, by apostolic writings and by way of precept* We command your fraternity that you compel through ecclesiastical censure those, *if there are any archdeacons in your episcopate*, who occupy churches in this manner or detain them after occupation, to relinquish them *with every pretext and appeal ceasing*; and, ordaining the same churches with suitable *and upright* persons, take care to punish the aforesaid archdeacons with due correction for so great a presumption.

Chapter IV

Latin source headnote: Persons incontinent against nature, if clerics, are deposed and thrust into a monastery; if laymen, they are excommunicated.

The same, in the Lateran Council.

Clerics *established in sacred orders who maintain women in their houses under the mark of incontinence are either to cast them off and live continently, or to be made strangers to ecclesiastical office and benefice*. But whoever shall have been detected laboring under *that* incontinence which is against nature, on account of which the wrath of God comes upon the sons of unbelief and consumed five cities with fire, if they are clerics, let them be cast down from the clergy or thrust into monasteries to do penance; if laymen, let them be subjected to excommunication and made wholly strangers to the assembly of the faithful.

Chapter V

Latin source headnote: A subject is not bound to obey a superior who demands or commands something contrary to the tenor of his privilege.

The same.

Indeed, if bishops demand anything from abbots beyond due obedience, contrary to the freedom of the order granted by our predecessors and by us, let the *same* abbots be free by apostolic authority to deny what is sought, *lest on this occasion this order, which thus far existed free, be bound by the snare of perpetual servitude*.

Chapter VI

Latin source headnote: A vicar of a church who usurps for himself the parsonship of that church contrary to an oath furnished ought not to be admitted to the exercise of his office.

The same, to the Bishop of Norwich.

We have also decided to establish concerning vicars who are obligated to the parsons by faith and oath that, if, *the religion of faith and oath having been contemned*, by falsely assuming the parsonship for themselves they rise up against the parsons, and concerning this shall have been confessed or convicted in court, henceforth they are in no way to be admitted in that episcopate to the exercise of their office.

Chapter VII

Latin source headnote: An excommunication rendered against a subject because he does not obey contrary to a privilege granted to him by the superior is not valid.

Clement III.

When, *in order to restrain the malice of certain persons, it was established with much deliberation in the Lateran Council that archbishops, bishops, archdeacons, archpriests, and also deans not exceed a fixed number of mounts and persons in visitations of churches, because, as we have heard, certain persons among the aforesaid do not observe this at all in your churches, we have decided attentively to provide healthfully for your advantage concerning this*. Therefore, by apostolic authority we grant to your discretion that, if prelates of churches should perhaps presume, when visiting churches, to exceed the number of mounts and persons established in the Lateran Council and demand procuration for them, you are to be free by apostolic authority to deny it; and, if on account of this they shall have promulgated any sentence against your churches or *your* clerics, *by apostolic authority* we decree it to be invalid. [*Let no one therefore, etc. Given at Rome at Saint Peter's.*]

Chapter VIII

Latin source headnote: An inferior prelate below a bishop cannot unite his own church or one subject to him to another without the bishop's consent, even with the metropolitan's authority intervening. It says this, and it is a highly citable case.

Celestine III, to Bishop Faustinus.

Just as it is known to pertain to the Supreme Pontiff to unite episcopates and subject them to another's power, so the union of churches of his diocese and their subjection belongs to the bishop. Therefore, since, *as became known to us*, the prior of Granda subjected or united his monastery, which is in your diocese and ought to be ordered with your consent, to the monastery of Accato without seeking your assent at all, *by apostolic writings we command and grant to your fraternity that* what he did *concerning this* without consulting you, you may by our authority invalidate as shall be just, notwithstanding the assent or confirmation that the metropolitan is alleged to have interposed, since in the diocese of his suffragan, without the latter's assent, he ought not to attempt anything *of this kind* contrary to canonical constitutions. We also decree that it is to be annulled, *as has been said, establishing, etc.*

Chapter IX

Latin source headnote: A cleric who publicly glories in his crime ought to be suspended.

Innocent III, to the Archpriest of Saint Andrew of Pall.

No one of sound mind is ignorant how grave a crime it is for clerics, when they have done evil, to glory *and exult in the worst things*. Indeed, we have learned, *which we report not without grief*, that, when R. Deserien. gave P., his daughter, as wife to a certain man named I., the deacon P., *of the church of Saint Peter and son of the priest A.*, was not ashamed publicly to confess that he had carnally known the aforesaid woman. From this it happened that the *aforesaid* husband sent her back to her own people, to whom she had been joined matrimonially. Therefore, *by apostolic writings* we command you that, if the aforesaid matters shall have been established to you, *with every contradiction and* appeal ceasing, you do not postpone suspending the aforesaid cleric from office and benefice, compelling the husband to receive his wife and exhibit to her the marital duty, as is just. [*Given on the fourth day before the Ides of May, in the first year of our pontificate,* 1198.]

Chapter X

Latin source headnote: A cleric who directly or indirectly furnishes authority or counsel for homicide is rendered irregular.

The same, to the Bishop of Hippo and the Abbot of Tileto, Visitors of Lombardy.

We have learned from your letters that, when you had gone to the church of Albenga together with *our venerable brother* the Archbishop of Pisa, then Bishop of Vercelli, to discharge the office of visitation, the Bishop of Albenga, among the other things that had been alleged against him, confessed *this to you* with his own mouth: that, when a certain man in a certain town belonging to his jurisdiction was accused of theft, and that man denied it altogether, offering to purge himself by the judgment of glowing iron and to be punished by hanging if he failed in it, the said bishop asked the judge what seemed good to him concerning this. And when the judge had answered that it should be

done as the thief himself had said, the glowing iron was brought into the presence of the bishop himself. When that thief had taken it, he was burned; whence the judge, terrified, consulted the aforesaid bishop as to what seemed good to him concerning this. He answered that, if *that* thief escaped thus, it would be an evil; although *by letters that the same bishop has now directed to us* he affirms that he used these words: "You hear how great the outcry of the people is; they all say [*that*] it is an evil if he thus escapes unpunished." And so the bishop and the judge entered the town itself with a multitude, in whose presence the aforesaid thief was hanged *by the authority of the bishop himself*; on account of which you sent him to the Apostolic See with your letters. But the same man, *when established in our presence*, never alleged *anything at all* concerning these matters before us, nor did we see your letters, although he asserts that he presented them to us. Indeed, *immediately* when the said archbishop, who fully disclosed to us the course of this affair, came to the Apostolic See, the same bishop withdrew from our presence and, though sought, could not be found. But *we deliberated diligently with our brothers concerning these matters, and*, because the same bishop is known to have offended gravely not only in the judgment of the glowing iron but also in the hanging of the thief, since he furnished to these not only authority but also his bodily presence, we judge him unworthy of the ministry of the altar. Therefore, since the pontifical office cannot be fulfilled without the ministry of the altar, *by apostolic writings we* command *your discretion* that you admonish him to resign the episcopate; otherwise, removing him *by apostolic authority* from the church of Albenga, *the obstacle of appeal being removed*, cause provision to be made for it by a canonical election of a suitable person, [*restraining gainsayers, etc. Given at the Lateran, on the Ides of December, in the eleventh year of our pontificate,* 1208.]

Chapter XI

Latin source headnote: A conferral of a benefice secretly made to an unworthy person ought to be quashed, and one who makes a second conferral before the first conferral is quashed ought for that occasion to be deprived of the power of conferring.

The same, to the Archbishop and the Abbots of the Greater Monastery and of Saint Julian at Tours.

When a dispute arose between the beloved sons B. and P., canons of Poitiers, concerning the subcantorship of the church of Poitiers, *each of them firmly* asserting that he had canonically obtained the subcantorship itself through the cantor of Poitiers, to whom its donation belonged, [*the aforesaid Bocard, coming on account of this to the Apostolic See, affirmed before our beloved son Guala, Cardinal Deacon of Saint Mary in Porticu, whom we assigned as auditor to him and the proctor of the aforesaid Peter, that the subcantorship itself had been canonically conferred upon him. He added that, even if the cantor had otherwise conferred it canonically upon the aforesaid Peter, the donation itself nevertheless ought not to have taken effect because of the unworthiness of the person, since that Peter was a public gambler and manifest usurer. But although, after many altercations, the aforesaid Bocard introduced certain witnesses to prove not only this but also his principal claim, nevertheless, because both he and the opposing party intended to produce several witnesses concerning the principal matter and the incidental matters, we committed the case itself to our beloved sons, the dean and cantor of Saint Radegund at Poitiers and the dean of Thouars, to be concluded by a canonical termination, transmitting to them the aforesaid attestations enclosed under our seal. When the parties were afterward established before them and the said Bocard sought the admission of his witnesses, it was answered on the other side that he was not to be heard at all, since through our delegated judges, the beloved sons the archpriest, the master of the schools,*

and Master P. Parvus, canon of Bourges, he had been bound by a sentence of excommunication because he refused at their command to admit the cleric Hugh as a canon of Faye. And when afterward that Bocard presented letters of the same judges concerning his absolution, the opposing party began to accuse them of falsity, because their final clause differed from the remainder of the writing both in the color of the ink and in the form of the letters, alleging that the same B., as one accused of the crime of falsity, was to be repelled altogether from his claim. Then, after manifold and diverse contentions, the judges themselves, with the will of the parties, received witnesses concerning both the principal and the incidental matters. But when the same B. afterward appealed to our hearing, the judges themselves remitted the parties to our presence with the attestations and the acts of the trial authenticated by their own seals. The parties, therefore, recently established on this account at the Apostolic See, litigated for some time before our beloved son Cynthius, Cardinal Priest of the title of Saint Lawrence in Lucina, whom we assigned to them as auditor.] We, therefore, having *diligently* inspected the attestations of both parties, found it *evidently* proved that the same P. was a public gambler and manifest usurer, since he had *publicly* lent eleven denarii for twelve at gaming. Whence, although *the same Peter*, to cloak the excess of so great a presumption, alleged that he had done this according to the custom of the clerics of Gaul, by which almost all clerics so frequently lend and gamble, we nevertheless, who by the debt of our office propose to root out pests of this sort and altogether condemn pleasure-giving games, by occasion of which one arrives at material for dissolution under a certain appearance of courtliness, regard the aforesaid excuse as frivolous, since it is cloaked by a depraved custom, which ought *rather* to be called corruption. For the offense is more punishable in those by whom authority to offend is usurped for framing excuses in sins. Therefore, because what is known to have been done concerning the *aforesaid* subcantorship for the same P. was done contrary to legitimate sanctions, according to which the gates of dignity ought not to lie open to base and unworthy persons, we have determined that it must be invalidated on account of his unworthiness and baseness. Furthermore, it was manifestly proved by witnesses against the aforesaid B. that the final clause had not been inserted in the letters of the same judges with the knowledge *of the aforesaid judges of Bourges*, as is expressed clearly in their depositions; *Robert the deacon also, introduced as a witness to prove this, deposed the same thing and added that, when he was to seal those letters,* [*he*] *inspected them diligently and did not then find the same clause appended*. Whence the other party alleged that, because the aforesaid B. had knowingly used letters thus falsified, he ought *deservedly* to be repelled altogether as a forger. But we, considering that, even if it were established *most evidently* that the said clause had been appended to those letters without the knowledge of the aforesaid judges, nevertheless, because proof was not made to us that the said B. appended that clause, or procured that it be placed by another, or even that he knowingly used letters thus falsified, determined that the same man was to be absolved from an accusation of falsity of this kind; especially since, after this was objected against him, he altogether ceased to use them. [*In addition, through the witnesses produced by Bocard concerning the principal matter it was shown sufficiently enough that on the fifth weekday—or, to speak more expressly, on the Thursday after the feast of Saint Michael, two years previously—the aforesaid subcantorship had been granted to him. But by his own confession it appeared that the same feast in that year had been celebrated on a Thursday, and thus it was proved by consequence that the said donation was made to B. on the eighth day after the feast itself. Moreover, through six witnesses—namely the cantor, Oliver, W. Gerru, R. Agnellus, I. Marinus, and P. of Marcai—whom the aforesaid P. introduced to prove that the donation made to him had preceded, it was manifestly proved that the often-mentioned subcantorship had been conferred upon him at an earlier time, since Oliver, W., and I. say manifestly that the donation was made to Peter on the second or third day after the said feast, the cantor that it was on the third or fourth day, and P. that it was in the*

week after the same feast. But by the witnesses whom Bocard introduced to disprove the said witnesses, Oliver and William were discredited as manifest fornicators. The cantor also is convicted by many witnesses of being perjured, because, although he said under oath that he had never given the aforesaid subcantorship to Bocard, it was proved on the other side by many witnesses that the cantor invested the same man in their presence. Moreover, R. Agnellus is known to have deposed nothing concerning the principal matter, although the party of Peter, saying that he had spoken ambiguously, attempted to show that the same witness had said concerning the principal matter that same thing which Riverius and William had said. But the two remaining witnesses, namely I. Marinus and P. of Marcai, remained, and they could not reasonably be discredited. For although the party of Bocard said that faith was not to be placed in the testimony of that P., because he had been a proctor in Peter's case—which it endeavored to establish from the fact that the witnesses of the same Bocard had said that the same I. had carried Peter's letters, sought witnesses, and done certain things of this kind—nevertheless, because it was not established to us that he had been the proctor of the same P., we judged that faith was to be placed in his testimony. We also regarded as frivolous what the same party of Bocard alleged, namely that, because Peter of Marcai said that the donation was made to the often-mentioned Peter in the week after the aforesaid feast, it is implied that that donation to Peter had by no means preceded the donation of B., which had been made on the eighth day after the same feast. For since a week, or seven-day period, is by no means extended beyond the seventh day, it is apparent that the donation made within the week, or even the seven-day period, was certainly made at an earlier time than that which was made afterward on the eighth day.] Therefore, since by the depositions *at least* of two witnesses, *who were in no way discredited*, it has been *evidently* established to us that the grant made to P. preceded, although it deserved to be disapproved because of the unworthiness of the same *P.*, we decree the grant afterward made to B. invalid and void. But because the cantor, *to whom the donation of the subcantorship itself is alleged to belong —to say nothing of his perjury*, conducted himself so inconstantly in this affair that, *as was premised*, he attempted to make a second donation before the first had been disapproved, and it is fitting that a person be punished in that in which he is seen to have offended, we have determined that the inconstancy of his variation is to be punished in this: that he is to have no faculty of granting the subcantorship itself on this occasion. By the authority of the present letters, commanding and granting you to assign the same, supported by our authority, *the obstacle of appeal being removed*, to a suitable person, [*restraining gainsayers, etc.*]

Chapter XII

Latin source headnote: To take cognizance of a matrimonial cause, and likewise to impose public penances and grant indulgences, pertains to the episcopal dignity; whence an inferior prelate ought not to intermeddle in these matters unless it belongs to him by special right.

The same, in the General Council.

From the complaints of bishops coming to us from diverse parts of the world, we have learned of the grave and great excesses of certain abbots, who, not content with their own bounds, extend their hands to those things that belong to the episcopal dignity, by taking cognizance of matrimonial causes, imposing public penances, also granting letters of indulgences, and presuming similar things, whence it sometimes happens that episcopal authority becomes cheap in the eyes of many. Wishing, therefore, in these matters to provide both for the dignity of bishops and the salvation of abbots, by the present decree we firmly prohibit any abbot from presuming to extend himself to such things, if he wishes to avoid his own peril, unless perhaps any one of them is able to defend himself concerning matters of this kind by a special grant or another legitimate cause.

Chapter XIII

Latin source headnote: A priest cannot be compelled to reveal a sinner or a sin confessed in penance.

Honorius III, to P., Cardinal Priest of the title of Saint Pudentiana, Our Vicar.

The beloved son John, priest *of Saint Thomas in Parione*, complained in an exposition *before us* that the rectors of the confraternity of the City, striving to constrain him to reveal the thieves and *that* which had been revealed to him as a priest concerning a certain theft, or to make satisfaction from it to the person who suffered the loss, pronounced a sentence of interdict against him unless he accomplished one of the aforesaid things *within eight days*. Therefore, because it would be pernicious for the aforesaid priest to reveal things entrusted to him in such a manner, and *again unjust* for him to be compelled to pay for that which he did not seize, *by apostolic writings* we command your discretion that, summoning the aforesaid rectors before you, you enjoin upon them that they cease entirely from burdening the aforesaid priest *concerning this*.

Chapter XIV

Latin source headnote: Private persons regularly cannot constitute a college and possess the signs of a college unless it is otherwise granted to them.

The same, to Provost R. and Archdeacon I. of Soissons.

Our beloved daughter in Christ, the Abbess of Iotrensis, took care to intimate to us that, although the priests and clerics of the church of Iotrensis in the diocese of Meaux have not been accustomed to have their own seal, nor are they one body such that it might be called a chapter, they nevertheless contend, *against the will of the abbess herself*, who is their head and patroness, that they are to have a seal *to her prejudice and burden; for which reason she petitioned us that this be prohibited to them. But because the aforesaid matters were not established to us*, we command your discretion that, *after the truth concerning these things has been more diligently investigated*, if it shall have been established to you that it is so, you expressly prohibit the said priests and clerics by our authority from presuming either to fabricate a seal anew or to use it if perhaps it has newly been fabricated, *restraining them, if they presume to come against our prohibition, from a presumption of this kind through ecclesiastical censures, appeal being set aside*.

Chapter XV

Latin source headnote: One who, contrary to his oath, denies that a prelate is his lord, or complains against him before a secular judge, or attacks him, ought to be deposed.

The same, to the Archdeacon of Saint Aubert, the Abbot of Annona, and the Provost of Cambrai.

We received a grave complaint, not devoid of grief, *and surrounded with the stings of insults to the whole clergy: that, when our venerable brother the Bishop of Amiens had conferred a certain vacant benefice, which is called the altar of Villesco, upon a certain suitable person—as he believed it to belong to him—while the Archdeacon of Amiens was absent, the same archdeacon, accompanied by a band consisting of his brother Manasser and certain others, approached the aforesaid bishop and, alleging that he had been wronged by him concerning this, insisted before him that the person instituted by the bishop should be removed altogether from the benefice itself without cognizance of the cause.* (*And below:*) We command your discretion that, if it shall have been established

to you that the *often-mentioned* archdeacon, once and a second time, contrary to the fidelity of the homage rendered and the reverence owed, denied that his bishop was his lord, or lodged an action against him concerning spiritual matters in the secular forum, or furnished either cause or counsel both to the attackers of the bishop and his associates and to his brother or his accomplices, you cut him off perpetually from the church of Amiens as a rotten member, *lest by his corruption he contaminate others, and remove him altogether,* causing his benefices to be assigned to suitable persons by those to whom *their* donation belongs; *otherwise, because public report labors against him and manifest presumptions appear, impose upon him canonical purgation concerning the aforesaid matters with ten persons of the same dignity, order, and province as oath-helpers. But if perhaps he shall fail in such a purgation within a time to be fixed by you, deprive him of office and benefice, every impediment of contradiction and appeal being removed, nevertheless causing the benefices which the same archdeacon holds to be assigned to suitable persons, as was expressed above*.

Chapter XVI

Latin source headnote: It sets forth fifteen burdens inflicted upon religious, from which it commands prelates to abstain.

Gregory IX, to all Prelates of Churches.

Exceedingly unjust (*And below:*) Since religious men, wholesomely denying themselves, have chosen to serve poor Christ in poverty according to His pleasure, as having nothing and possessing all things, there are not lacking many, both prelates of churches and others, who, seduced by blind cupidity and regarding whatever the piety of the faithful bestows upon the aforesaid persons as taken away from their own greed, disturb their peace in manifold ways. For, against the rule approved by the Apostolic See and the institutions of their order, they wish, against their will, to hear their confessions, to impose penances upon them, and to furnish them the Eucharist; nor do they wish the body of Christ to be reserved in their oratories. They compel their dead brothers to be buried at their churches and their funeral rites to be celebrated there; and if any one of the dying brothers chooses burial elsewhere than in their churches, they compel the funeral first to be carried to their churches, so that the offering may fall to their uses. Nor, allowing them to possess a bell or a blessed cemetery, do they permit them to celebrate divine things except at certain times. They also wish to fix according to their own will in their houses a certain number of brothers, priests, clerics, and laymen, as well as of candles, lamps, and ornaments, and they demand from them the residue of the candles when new ones are set out. Nor do they permit their new priests to celebrate their first Masses anywhere other than in their churches, nevertheless compelling them to receive and reserve for those prelates' use the offerings in the daily Masses that they celebrate in their own places and at their own altars. They also contend to extort from them under the name of an offering whatever is given to them by the pious devotion of the faithful within the precinct of their houses while they celebrate the solemnities of Mass; and they wrongly claim for their own right what is bestowed upon them unconditionally, both in ornaments of the altar and in ecclesiastical books. Therefore, we command that each and all of you desist from the aforesaid burdens, more strictly restraining your subjects from things of this kind. [*The twelfth day before the Kalends of September,* 1231.]

Chapter XVII

Latin source headnote: It sets forth twelve burdens upon the Preachers and Minors, from which it commands prelates to abstain.

The same, to all Prelates of Churches.

Exceedingly depraved (*And below:*) Since certain religious men—namely, the Friars Preachers and Minors, whose order and rule the Apostolic See is known to have approved—serve poor Christ in the most straitened poverty, many prelates and others compel them to attend their synods and to be subject to their constitutions. Not content with these things, they threaten that they will hold chapters and scrutinies in the places of the brothers for the purpose of correcting them, demanding fidelity confirmed by an oath from their ministers and custodians. Likewise commanding them for a slight cause to come with them processionally both outside and within cities, they fulminate a sentence of excommunication against their benefactors; and, threatening the same thing against the brothers, they endeavor to remove them from the places in which they serve the Lord unless they obey them in all the things said above. In addition, prohibiting the brothers from daring to go, when devoutly invited by the people, to more honorable cities and towns where they may dwell religiously and honorably, they presume to promulgate a sentence of excommunication both against the brothers who go and against those who receive them. They also contend to extort from them tithes from the fruits of gardens, as well as revenues from the dwellings of the brothers as from houses of Jews, asserting that, if the brothers did not dwell there, certain proceeds would be paid by other inhabitants. And in order that they may subject them entirely to their dominion, they wish to set ministers and custodians over them at the choice of their own will. Therefore, we command that each and all of you desist from the aforesaid burdens, more strictly restraining your subjects from things of this kind.

Chapter XVIII

Latin source headnote: One who does not observe an interdict is suspended from office and benefice and from all jurisdiction. It says this according to the true understanding.

The same, to the Archbishop of Braga.

So great is the key of Peter (*And below:*) It cannot fail to come to mind, to the confusion of P., formerly Bishop of Coimbra, how greatly he offended against us and the Roman Church, despised the keys of Peter, and injured ecclesiastical power, since he not only rashly violated the sentence of interdict which he had observed from the beginning, but even induced others—indeed, compelled them—not to observe it. And those whom he could by no means induce by admonitions or bend by threats and terrors to violate the sentence of interdict, after atrocious injuries, loss of goods, and despoiling of kinsmen, he stripped of dignities, prebends, and benefices and compelled miserably to go into exile, conferring those things upon his supporters in this matter not without rash presumption. All these things the same bishop publicly acknowledged in our presence and that of our brothers. Although the aforesaid bishop resigned voluntarily into our hands, nevertheless, unwilling that those who did not fear to violate a sentence of interdict of this kind by their own rashness, and to receive the dignities, prebends, and benefices of others who had been despoiled of them without fault and without reasonable cause, should escape the severity of canonical vengeance, lest the perversity of the deed pass into an example for presumptuous persons, by the authority of almighty God we decree invalid and void every institution, destitution, and conferral of prebends, benefices, and dignities presumed by the same bishop, and the sentences of excommunication or interdict pronounced by him against anyone on this occasion after the violation of that interdict. But because where the offense is greater,

there it is to be avenged more severely, we command that, after removing altogether from the benefices themselves, prebends, and dignities, and also from any other benefices and churches that they hold, all whom the aforesaid bishop intruded into the aforesaid benefices, prebends, and dignities, you suspend by apostolic authority from office and benefice both those same presumptuous persons and all others who damnably violated the aforesaid interdict. You shall also compel those who are established to have extended rash hands against the persons and property of the aforesaid canons, prelates, and clerics to come to our presence to receive a sentence according to their deserts, invoking for this, if necessary, the assistance of the secular arm.

Title XXXII: On Notification of a New Work

Chapter I

Latin source headnote: Even a church built after notification of a new work is to be destroyed at the builder's expense. It says this together with the following chapter.

Lucius III, to the Bishop of Padua.

We have understood from your letters that, when the cause which is pending between *our beloved sons*, the prior of Saint Cyprian *of Venice* and the clerics of Rodigio, concerning a chapel which was constructed by those clerics to the prejudice of the baptismal church of Costa, *as the account of the same prior demonstrated to us*, had been delegated to your fraternity *by the Apostolic See to be terminated by a canonical conclusion*, the parties having been summoned to your presence, it became sufficiently known to you through witnesses that the aforesaid church of Rodigo had begun to build that chapel after an appeal had been made to us and notification of the new work had been given; and on this account the aforesaid prior sought in judgment that whatever had been done in the often-mentioned chapel after the appeal had been made to us and after notification of the new work had been given should be demolished altogether. Concerning this it seemed doubtful to your discretion whether one could proceed to these things by canonical judgment, [*and*], *since nothing concerning notification of a new work has been defined in the canons, you determined that the Apostolic See was to be consulted*. But because, just as *human* laws do not disdain to imitate the sacred canons, so also the statutes of the sacred canons are aided by the constitutions of *former* princes, *by the present letters* we command your fraternity that, diligently considering that whatever is built after notification of a new work, whether by right or by wrong, ought according to legal constitutions to be demolished, and because no church is to be constructed to the prejudice of another, you do not delay in terminating the matter itself according to the statutes of the laws and canons, *appeal being removed, having associated prudent men with you. For since we believe you skilled in both laws, we deemed it safer for the cause to be terminated through your solicitude—you who will be able more fully to know the truth from the statements of the parties and the bounds and limits of the places—than for anything to be defined by us while we are ignorant of the character of the matter*.

Chapter II

Latin source headnote: It is summarized in the first chapter above.

Innocent III, to the Archbishop of Canterbury.

Since by the office of the apostolate committed [*to us, although undeserving, we hold the place of Him who, according to the prophetic word, delivered the poor man from the powerful and the needy man who had no helper, it*

is fitting that we strive with diligent effort lest lesser persons be oppressed by greater ones, but that prelates so exercise the jurisdiction received over their subjects that they are proved to benefit rather than to preside. Therefore, attending to these things according to the debt of our office,] by a *strict* command [*we long ago*] *ordered you that, in the affair of the chapel of Lamhee, according to the form contained in the apostolic letters, you cease altogether from oppression of the monks of Canterbury.* [*Concerning this, our beloved sons B., Abbot of Boxleia, and W., Abbot of Ponte Roberti, your envoys, coming to our presence, endeavored in many ways to excuse your fraternity. In the first place, they alleged that, when Theobald of good memory, Archbishop of Canterbury, and the glorious Thomas, his successor, considering that no one serving as a soldier for God entangles himself in secular affairs, and being unwilling that the monks of Canterbury, abandoning the divine offices, should transfer themselves to secular affairs, had had the will and purpose to build a church in honor of Stephen the Protomartyr and to ordain secular clerics in it, revenues being assigned to them from their proceeds and churches, through whom they could expedite their affairs both at the Apostolic See and before secular courts, the hasty death of the first and the long exile of the second impeded their laudable purpose, as was more fully contained and expressed in the letters of our venerable brother I., formerly Archbishop of Lyons, which were recited in our presence and that of our brothers. Baldwin of good memory, Archbishop of Canterbury, succeeding them as much in purpose as in office and in will as in dignity, began to build a church near the suburb of the city of Canterbury, at a distance of about three or four stadia, in honor of the aforesaid protomartyr and blessed Thomas, an indulgence for this having first been obtained from Pope Urban, our predecessor of happy memory. By his authority it was granted to him that he could both build a church in honor of those martyrs and ordain suitable persons for whom he would provide canonically in ecclesiastical benefices, yet so that the churches should by no means be defrauded of the services owed and the necessary stipends. And although that Urban had repeatedly directed letters against the said B., your predecessor, concerning demolition of the work, they said that, because he made no mention in them of the indulgence already granted, no derogation whatever had been made to it by repeated rescripts; they alleged, moreover, that those rescripts had been obtained both by false suggestion and with the truth suppressed, and had not come to the knowledge of the archbishop himself. Whence, if he had not obeyed them, he could not rightly be reprehended. They likewise produced in their own favor a rescript of Pope Gregory, our predecessor of holy memory, who, although he had granted by general letters that rescripts obtained within three months before the death of the aforesaid Urban, his predecessor, should possess the same firmness, notwithstanding the death of the mandator, that they ought to have possessed if he were then living, nevertheless was unwilling that matters touching the archbishop himself and his clerics be included under the aforesaid generality. By this rescript, they said, he had plainly derogated from his predecessor's letters, which he had directed against the archbishop at the instance of the monks. They said that those letters, and also those of Clement of good memory, his successor, who had been his imitator in this matter, had been wholly derogated from by an amicable settlement then made, by the will of the parties, between the archbishop and the aforesaid monks through our most dear son in Christ R., the illustrious King of the English, our venerable brother Walter, Archbishop of Rouen, and certain bishops and abbots. For when, in the time of the aforesaid B., Archbishop of Canterbury, the aforesaid king, archbishop, bishops, and abbots had come to Canterbury, the parties submitted to them by compromise both the construction of that church and the institution of the prior and certain other questions. They, after diligent deliberation had first been taken, judged together that the archbishop himself had reasonably built the aforesaid church. Nevertheless, for the good of peace, at the instance of the aforesaid king and also of the others, he granted that he would transfer the college of canons to another place which he should choose as suitable. Therefore, your said envoys alleged that by this settlement the monks had renounced the preceding rescripts obtained from the Apostolic See, since thereafter the said archbishop, leaving the former place where he could not build without scandal to the monks, transferred his purpose to the place of Lamhee, fifty miles distant from the city of Canterbury,*

where he began to build a church, as he had before, in honor of the aforesaid martyrs, so that because of the exceedingly great distance between the places no material for complaint would remain to the monks. Afterward, succeeding him, you wished to perfect what had been done less fully by him; and they endeavored to show that this was lawful for you by the rescript of the letters of Pope Celestine, our predecessor of good memory, who in the seventh and final year of his pontificate, in order to allay every discord between the churches of Canterbury and Lamhee and lest the canons of Lamhee possess the faculty of rising against the cathedral church, granted you free faculty to arrange the church of Lamhee itself internally and externally, notwithstanding letters obtained for our venerable brother the Bishop of Chichester and our beloved sons the Abbots of Waltham and Reading. Therefore, they said that through these letters his preceding writings, which seemed contrary to them, were wholly revoked. Thus your said envoys strove to prove their position through the laudable purpose of the aforesaid pontiffs Theobald and the glorious martyr Thomas, through the indulgences and rescripts of the Roman Pontiffs Urban, Gregory, and Celestine, and through the aforesaid settlement made by the will of the parties. But on the part of the monks the foregoing arguments were answered in order as follows: that we could not and ought not judge concerning the hidden wills of men, which the Lord who searches the reins and hearts reserved to Himself alone, nor were they able to answer such matters, the allegation of which in judgment was nothing other than to divine the secrets of hearts. Indeed, they said that by the indulgence of Pope Urban, our predecessor, which we mentioned above, no derogation whatever had been made to their right, because the canonical assignment of benefices through it was reserved to the Archbishop of Canterbury, who according to canonical constitution could not proceed without the deliberation and assent of the monks; far from consenting to his deed in this matter, they had even expressly contradicted it, as subsequent events showed, and they still persevered in the same purpose. With them thus contradicting, the judgment of the superior was to have been awaited. They endeavored to show the same thing also by this argument: that according to legitimate sanctions, if at any time a principal benefit is granted to someone—for example, the free making of a testament—nothing else seems to be granted than that he may make a testament in a legitimate and also customary manner. Likewise, one who obtained from a prince that he might build in a public place will not be able to build to another's inconvenience unless this very thing also was sought and granted by the prince. They further asserted that derogation had been made from the aforesaid indulgence by the subsequent executory letters of Urban himself, by which he willed that the work itself be held accursed and profane. They alleged that, whether the indulgence had been shown before Urban himself, it was altogether abrogated, since notwithstanding it the demolition of the church itself had been commanded; or whether it had been omitted, this ought to be imputed to its holder, since it is provided even by civil law that lawsuits ought not to be restored under pretext of instruments discovered afterward. They wished to prove the same thing by the letters of Pope Clement, our predecessor of pious memory. When the envoys of the parties were established in his presence, because the said B., your predecessor, had wished contumaciously and pertinaciously to complete the accursed and profane work, he, after the example of Pope Urban, his predecessor, strictly commanded the aforesaid archbishop, on the counsel of his brothers, to take care to demolish without any delay whatever he had done in the named church, revoking altogether as invalid whatever had been wrongly attempted concerning the institution of canons and other matters. There, whether the aforesaid indulgence had been omitted or even alleged, for the reason stated above it could not impede their claim. They said that their party could be burdened in no respect by the settlement itself, which we mentioned above, since it had been violently extorted through fear of the king. For when Pope Clement, our aforesaid predecessor, in order to allay the discord arisen between the archbishop and the monks of Canterbury, had specially sent into England John of Anagni of good memory, then Cardinal Priest of the title of Saint Mark and legate of the Apostolic See, but afterward Bishop of Palestrina, after he crossed there, it was brought about by the procurement of the said B., Archbishop of Canterbury, that he was held at the port of Dover against his will for many days, which redounded to the grave

injury of the Roman Church. Nor was he permitted to proceed to Canterbury before the monks suffered force and were compelled to sustain all things in the peace which they made with the archbishop through the said King of the English, who at the same time had come to Canterbury with his bishops. Therefore, when he heard this while situated nearby, and afterward knew it while present at Canterbury, he took care to commit it to writing so that the truth of the matter might become known to all and so that what had been done might not generate prejudice to the justice of the monks. And if the archbishop himself or any of his successors should at any time produce a writing concerning the form of the peace, it would be known to all that it had been composed without the consent or knowledge of the brothers of the said church and had not been exhibited to him when he requested it, although he had been sent to the cause by the Supreme Pontiff. Whence he ought either to have confirmed the transaction if it accorded with justice, or, if it had been done otherwise, to have invalidated it. Thus, therefore, knowing that manifest violence had intervened in that deed, by the apostolic authority with which he functioned he established that neither the settlement thus made nor the compromise violently extorted nor any writing thus composed should be valid, and that it should bring no prejudice to those monks in the future, since all things had been completed in his presence and against his contradiction, as is contained in his public letters, which we caused to be recited before us. After these things, when Pope Celestine of good memory, our predecessor, by apostolic authority revoked as invalid all things that had been done by force or fear against the monks by the aforesaid Archbishop B., he expressly decreed to lack force those things in particular which were alleged to have been done against the command of the Apostolic See while the legate of the Roman Church was present and contradicting, as they were contained and expressed in the authentic instrument of the same legate, namely I. of Anagni, formerly Cardinal Priest, who had been sent into England on account of the cause itself, and whatever the same archbishop had obtained contrary to the right of the monks or the tenor of the privileges of the Apostolic See. He further established that no man should draw into precedent those things which he had wrongly done, and that those things which he had obtained from the Apostolic See with the truth suppressed should at no time generate prejudice in any matter to the right or privileges of the monks, just as was established to us and our brothers from the contents of those letters. The monks also asserted that from the very greater distance of the place a greater prejudice had been generated against them, because, since secular clerics were said by your envoys to have been summoned to supply their default, the affairs of the church of Canterbury could scarcely be managed through nearby clerics while the monks were absent, whereas, with those clerics situated far away and the absence of the monks seized as an opportunity, the affairs would be transacted without the monks' knowledge and while they were altogether unconsulted, whence the church of Canterbury would incur loss and damage. Thus nothing accrued to them through this, since the same cause for contradiction remained. They further asserted that the final rescript of the said Pope Celestine, our predecessor, lacked force, as having been surreptitiously obtained through suppression of the truth, since in it no mention was made of the commands that had proceeded from Pope Urban and Clement, nor even of that confirmation which he himself had granted concerning the quashing of the aforesaid settlement, and especially since he is said to have granted that rescript at a time when sickness oppressed him exceedingly. To found their position, those monks produced the rescripts of the aforesaid Roman Pontiffs Urban, Clement, and Celestine, and also our own after those, by which it was commanded most urgently that whatever had been attempted concerning the aforesaid chapel should be held invalid and void.] But when the things we have premised had been prudently alleged by the envoys in our presence and that of our brothers, we, who have received a time for judging justice, wishing to adhere to the footsteps of Him with whom there is no acceptance of persons, whose place, although unworthy, we hold on earth, and so to walk prudently on the royal road that we turn neither to the right nor to the left, and, believing that our predecessors Urban, Clement, and Celestine also were to be imitated more fully, especially in those things which they established after prior deliberation, *on the common counsel of our brothers, by apostolic writings* command your fraternity *and*

strictly enjoin upon you in virtue of obedience that, *every contradiction, excuse, and appeal ceasing, within thirty days after receipt of the present letters*, at your expense you cause to be demolished altogether whatever was built in the church of Lamech after notification of the new work—(notwithstanding even if you shall have been absent [*from your church*], since it is also provided by a legitimate sanction that, if one to whom a new work had been notified builds before remission and then begins to bring an action that he has a right to possess what was thus built, the action ought to be denied him)—altogether reducing to invalidity whatever is known to have been ordained by you or *your* predecessor concerning the institution of canons there and other things pertaining to that church, their revenues being recalled to their former state. We command that those canons, because they were instituted there, be declared by you, on our authority, absolved from the obligation of the oath rendered. For since the principal matter does not now stand, whatever followed from it or on account of it we decree under the aforesaid strictness is to be invalidated, *as has been sanctioned by canonical and civil tradition.* [*Furthermore, the clerics who celebrated divine offices in that chapel after the apostolic prohibitions, as we commanded through our other writings, you shall hold as suspended until they have made competent satisfaction concerning this. Nor shall you delay in restoring to the said monks all things that were attempted to their burden—namely by the seizure of presents, churches, and other things—which they possessed before the appeal; and henceforth, on occasion of this affair, you shall not presume to innovate anything concerning the state of the monastery against our prohibition. But if* (*which we do not believe*) *you shall either contemn or delay to fulfill our command as was premised, you shall know yourself from that time suspended from pontifical office, and for contempt of the apostolic command we will that you come to our presence to answer. By the counsel of our brothers, strictly enjoining in virtue of obedience, we also command our venerable brothers, the suffragans of the church of Canterbury, that, unless you bring our command into effect within the aforesaid time, they render you no obedience or reverence, because it is just that one who scorns to obey his own prelate should not be obeyed by his subjects. But if perhaps not even thus shall we be able to recall you to the good of obedience—for which evil is never committed, but good ought often to be left undone—you shall know that a greater punishment threatens you, since wounds that do not feel the medicine of poultices must be cut away with iron. Indeed, concerning the aforesaid matters, in which with a safe conscience we could not proceed in another manner, we ask your fraternity not to be saddened in any way, because* (*God being witness*) *they proceeded not from any indignation, but because, although insufficient, we have been established in the seat of justice, whence we are bound to preserve the rights of each person unimpaired. We could not, without grave offense to the Creator, show favor to your fraternity, which we embrace very sincerely, since we hold you among our brothers and fellow bishops as an honorable member and an immovable column in the house of the Lord. Nor can you impute anything to us in this matter, since, according to canonical tradition, when counsel cannot be given to anyone except by sinning, then a man ought to judge that he has nothing he may do. It is also found in the secular laws that those things which in deed injure our piety, reputation, and modesty, and generally those things which are opposed to good morals, are to be believed things which we cannot do.*] Concerning this also we cannot sufficiently marvel: although *the said church had now long been, as it were, a stone of offense and a rock of scandal, on account of which we and our predecessors were so gravely moved against you and your predecessors, and* the religious men, *equally prudent*, the monks of Canterbury, who abandoned all things for Christ, did not hesitate frequently to expose their persons and property to so many labors *and pains, so many fears* and perils—which *without doubt neither the former nor the latter, as was said*, would have done unless they knew that the aforesaid matters looked to the grave detriment of the church of Canterbury—*to omit other things*, at least for the avoidance of so grave a scandal to your neighbors you did not cease from things of this kind that had even been prohibited to you, although you ought to

have learned from the testimony of sacred scripture that, while those works which cannot be omitted without mortal sin are not to be abandoned to avoid scandal, nor ought those things which cannot be committed without mortal sin to be committed to avoid scandal, nevertheless one must cease, for the removal of scandal, from those things which can equally be committed and omitted without mortal sin, and one must also persevere in them for the avoidance of scandal. Whence the Apostle *says*: "If a brother is scandalized, I will not eat flesh forever"; and the Lord in the Gospel says against those who furnish the material of scandal: "Woe to that man through whom scandal comes; it is better for him that an ass's millstone be hung about his neck and that he be sunk into the deep." And although the scandal of the greater is to be avoided, the scandal of the little ones is also to be avoided, according to the testimony of Truth: "Whoever shall scandalize," He says, "one of these *least* little ones who believe in me, etc." Therefore, let an end henceforth be imposed by you upon *the things that have been premised* in such a way that the rebellion of past contradiction may *not undeservedly* be expiated through the virtue of subsequent obedience. [*Given at the Lateran, on the Kalends of December, in the first year of our pontificate,* 1198.]

Chapter III

Latin source headnote: It is in the option of one notifying a new work whether he ought within three months to show his own prejudice, and meanwhile work is to cease, or whether, after security for demolishing the work has been received, he permits building to proceed at once. It says this together with the following chapter.

Honorius III.

From the report of the canons of Saint Opportuna *of Paris*, it became known to us that, concerning the fact that N. *Rufus*, a citizen of Paris, was building in a certain open place belonging to their church, *situated within their cloister*, to their prejudice and burden although they prohibited it, they lodged a complaint before the official of the Archdeacon of Paris. They offered immediately to prove the prejudice and that the open place belonged to their church, and further petitioned that the building be prohibited notwithstanding that the said N. offered security for demolishing the work. And because the same official decreed by an interlocutory ruling that their proofs were to be admitted and that meanwhile rest was to be taken from the work, the same N. appealed to the church of Sens. But when the official of Sens, *a kinsman of the aforesaid Nicholas*, after revoking that interlocutory ruling *solely at the choice of his own will*, decreed that, without their proofs having been admitted, the work was to proceed under security for demolishing it, the aforesaid canons appealed to our hearing, *whence they petitioned that we command their proofs to be received and the building to be prohibited*. Therefore, *by apostolic writings* we command your discretion that, if it is so, after revoking as invalid whatever you shall find to have been *rashly* attempted after an appeal of this kind, *you establish concerning this what shall be just, appeal being set aside, causing* etc.

Chapter IV

Latin source headnote: It is summarized in the preceding chapter.

Gregory IX.

The person to whom you allege that you notified a new work is bound, notwithstanding the security which is offered by him for destroying the work if it is found not to have been built by right, to wait

for you for the space of three months while you wish to prove the prejudice to your right.

Title XXXIII: On Privileges and the Offenses of Privileged Persons

Chapter I

Latin source headnote: Episcopal dignity ought not to be bestowed except upon distinguished and populous places.

Pope Leo.

Episcopal governance ought to preside only over larger peoples and more populous cities, lest *that which the divinely inspired decrees of the holy Fathers prohibited—the sacerdotal eminence being bestowed upon villages and estates or obscure and solitary municipalities—and* an honor to which more excellent places ought to be committed become cheap through its very multiplicity. [*But what now, etc. Given on the fourth day before the Ides of August,* 446.]

Chapter II

Latin source headnote: Notwithstanding the privilege of forum, a lay malefactor against a church can be punished by the church.

Pope Gregory, to the Subdeacon.

Just as we do not wish to disturb the privileges of laymen in their judgments, so, when they prejudice us, we wish to resist them with moderated authority. Therefore, to coerce violent laymen is not to act contrary to law, but to furnish assistance to law. [*Therefore, because God gave, etc.*]

Chapter III

Latin source headnote: Even exempt religious ought not to receive churches and tithes from laymen without the consent of the diocesan bishops. It says this as far as § Excommunicated Persons. — § 1. Excommunicated and interdicted persons ought by no means to be admitted to divine things, even by exempt religious. It says this as far as § But in Churches. Abbas Siculus. — § 2. Even exempt religious do not institute or remove persons, without consulting the bishops, in churches that do not belong to them by full right; but they exact an account in temporal matters from those instituted. It says this as far as § But If. — § 3. Hospitallers and Templars celebrate once a year in a church situated in an interdicted place; nevertheless, bodies of the dead are not buried there. It says this as far as § Concerning Confraternity Members. Abbas. — § 4. Confraternity members of exempt persons, or their oblates, who have not transferred themselves entirely, can be judged by the ordinaries of the places. It says this to the end. Abbas Siculus.

Alexander III, in the Lateran Council.

Since we ought both to plant sacred religion and to foster it when planted in every way, nowhere do we accomplish this better than if, by the authority committed to us *by God*, we take care to nourish those things which are right and to correct those which impede the progress of virtue. But from the *vehement* complaint of our brothers and fellow bishops we have learned that the brothers of the Temple and Hospital, and *also* other religious, exceeding the privileges granted to them by the Apostolic See, presume many things against episcopal authority which both cause scandal *to the people*

of God and produce grave peril to souls. *For they alleged that they receive churches from the hands of laymen; admit excommunicated and interdicted persons to ecclesiastical sacraments and burial in their churches without the bishops' knowledge; institute and remove priests; and, when their brothers go to seek alms, although it was granted to them that at their arrival churches should be opened once a year and divine offices celebrated in them, several of them, coming repeatedly from one or diverse houses to an interdicted place, abuse the indulgence of their privileges in celebrating offices and burying the dead, and then presume to bury the dead at interdicted churches. Also, by occasion of the confraternities which they establish in many places, they enervate the strength of episcopal authority, while under pretext of certain privileges they intend to fortify against the bishops' sentence all who wish to betake themselves to their confraternity. In these matters, however, since the excess arises not so much from the knowledge or counsel of the superiors as from the indiscretion* [*of certain*] *inferiors, we have decreed that the things in which they exceed are to be removed and the things which create doubt are to be declared.* Therefore, we prohibit both them and also any other religious from receiving churches and tithes from the hand of laymen without the consent of the bishops, relinquishing *even* whatever they received at any time contrary to this tenor. § 1. We likewise establish that excommunicated persons and those interdicted by name are to be avoided by them and by all others according to the sentence of the bishops. § 2. But in their churches which do not belong to them by full right, they shall present to the bishops the priests who are to be instituted, so that they may answer to the bishops *indeed* concerning the care of the people, but render to the religious themselves a competent account concerning temporal things. Nor shall they dare to remove those instituted without consulting the bishops. § 3. But if Templars or Hospitallers come to an interdicted church, they are not to be admitted to ecclesiastical office except once in the year, nor then are bodies of the dead to be buried there. § 4. *Concerning* confraternity members, however, we establish this: that, if they have not wholly given themselves to the aforesaid brothers but have determined to remain in every respect in their own properties, on this account they shall in no way be exempted from the sentence of their bishops; rather, the bishops shall exercise their power over them as over their other parishioners when they are to be corrected for their offenses. What has been said concerning the aforesaid brothers, we command also to be observed by other religious who by their presumption seize the rights of bishops and presume to come against their canonical sentences and the tenor of our privileges. For if they come against this statute, both the churches in which they presumed those things shall lie under interdict, and what they did shall be held invalid *and void*.

Chapter IV

Latin source headnote: One who derogates from the privileges of others is to be deprived of his own privileges.

The same, to the Archbishops and Bishops to whom these letters shall come.

Our beloved sons, the brothers of the Hospital of Jerusalem, have shown by a complaint transmitted to us that you are unwilling to do justice for them concerning their malefactors, contemning the reception of their privileges, *and that you in no way permit them to seek alms in your parishes or to bury their brothers. Therefore, because those brothers are fortified with many liberties and privileges by the Roman Pontiffs, which we are unwilling to allow to be infringed in our times, by apostolic writings we command your fraternity, by way of precept, that you cause absolutely no molestation to the said brothers in those things which are known to have been granted to them by the Roman Church, nor presume in any way to contradict or deny those things to them. For if henceforth we shall be able to discover such things concerning you in truth*, know for certain that we shall

curtail the privileges granted to you, since you do not fear to oppose *our authentic writings and those* of the Roman Church.

Chapter V

Latin source headnote: Even privileged persons cannot admit excommunicated persons to burial; and, if they have admitted them, they ought to cast them out from there; and, if they have not done so, the bishop shall supply their omission.

The same, to the Archbishop of Canterbury.

For this purpose, *although undeserving, by the Lord's disposition we have been established in the see of the prince of the blessed Apostles: that we ought to plant the things which look to the adornment of the virtues, and take care to pluck up and root out the things which are opposed to reason and impede the advancement of salvation. Indeed, we have learned that the Hospitallers presume, against the prohibitions of the bishops, to consign to ecclesiastical burial persons excommunicated by name, not considering how grave it is to communicate in death with those whom the Church, while they lived, separated from her bosom for their offenses. Whence, because we neither wish nor ought in any way to tolerate presumption and rashness of this kind, brother, by apostolic writings we* command you to order the Hospitallers that, if they have buried in the cemeteries of churches any who died in excommunication, they cast them altogether outside those *cemeteries*. But if they are unwilling to do so, you shall carry out this *very thing, by our authority, the obstacle of appeal being removed,* concerning those whom it shall be established *to you* died in excommunication. [*Furthermore, concerning these persons, etc. Given at Ferentino, on the tenth day before the Kalends of April,* 1175.]

Chapter VI

Latin source headnote: Prescription runs against the privilege of a church over a period of thirty years, but today over forty, as below in this same title, *Accedentibus*.

The same, to the Abbot and Monks of Saint Andrew of the Cistercian Order.

If for thirty years you have paid tithes to the canons of Plautio from the land that you possess in their parish, from now on [*and*] in full [*without any*] *molestation or occasion, appeal being set aside*, you shall pay them those tithes, *and you shall restore in full those which you are known to have withheld*. For although by benefit of the privileges of the Roman Church it was granted to the brothers of the Cistercian Order that they ought to pay no tithes *or first fruits* from their labors, nevertheless you wished for so long a time to detract from the privilege granted [*by*] *us* to you; and, because everyone is free to renounce his own right, you cannot defend yourselves in this matter in that way. [*Indeed, unless we loved you and your order so greatly, etc.*]

Chapter VII

Latin source headnote: Judgment is not to be made concerning privileges unless their tenor has been inspected, and according to their contents they are to be observed by all subjects.

The same, to the Bishop of Amiens.

Moreover, although the Templars and Hospitallers have been endowed with many prerogatives of liberty, we do not doubt that they possess a different liberty in those places in which they had been inhabitants before the places came to them. You can perceive all this more fully from an inspection of

their privileges, and you shall observe according to what you find. For we wish them to observe the tenor of their privileges in such a way that they are in no way seen to transgress their bounds.

Chapter VIII

Latin source headnote: Exemption from the jurisdiction of bishops is not proved by payment of a census made to the Roman Church.

The same, to I., Legate of the Apostolic See.

We have received the letters which you directed concerning the churches paying a census *in the episcopate of our venerable brother the Bishop of Novara, and from their tenor we have perceived how vigilant you are in preserving our rights*. Nevertheless, we wish it not to escape your diligence that, just as not all those who exist specially under the right of blessed Peter pay a census annually to the Apostolic See, so not all those paying *our* census are held immune from subjection to bishops. Therefore, the privileges of the *same* churches are to be inspected, and their tenor is to be attended to more diligently, so that, if it shall have been discovered that a church which pays a census exists specially under the right of blessed Peter and that an annual census is rendered as a token of the liberty received, it will not undeservedly be able to enjoy a special prerogative. But if the census is paid as a token of the protection received, nothing is seen on this account to have been withdrawn from the right of the diocesan bishop. *Therefore, since it is established that the priest of Saint Peter promised obedience to the aforesaid bishop at his ordination, as he confessed and asserted at law, we are unwilling that you protect him or any others, because, just as we wish our rights to be preserved by our brothers and fellow bishops, so it is fitting for us to guard their rights unimpaired.*

Chapter IX

Latin source headnote: A privilege granted to one person cannot be extended to another on account of identity of reason. It says this, and it is customarily cited every day.

The same.

Indeed (*And below:*) It is rash and unworthy for anyone to presume by his own authority for himself that which the Roman Church, after regard was had to a certain reason, willed to grant to someone by singular benefits.

Chapter X

Latin source headnote: Public bells cannot be kept in private oratories, even by religious. It says this; and hold this text in mind, for it is cited every day and is in use.

Celestine III, to the Bishop of Ávila.

You desire to be certified by *our* open letters whether Templars, Hospitallers, and others having oratories in their houses are permitted to place bells in them and ring them publicly. We respond to the consultation *which you make, and we say*, that they are not permitted to do this; rather, they are to be restrained by you through ecclesiastical censure, appeal being removed, so that they are content with their own right in such a way that they do not impede the justice of others.

Chapter XI

Latin source headnote: Throughout the whole province those Hospitallers who send persons falsely marked with the cross to collect alms are deprived of the office of exhortation; and, if those sent are laymen, they are excommunicated, but, if they are clerics, they are suspended from office and benefice. Those who celebrate in a polluted church before its reconciliation are punished by the same suspension; persons suspended by bishops cannot be absolved by exempt persons; and confraternity members of privileged persons who do not transfer themselves entirely to them are not privileged.

Innocent III, to the Archbishop of Lyons.

The tenor of your letters has taught us that the brothers of the Hospital of Saint John send lay and illiterate men to collect alms *which the people have been accustomed to send from devotion to the aforesaid place for the sustenance of the poor. But because they are not sufficient by themselves to go about all the places, they associate with themselves clerics, priests, and even rude laymen—not religious, but practiced in wickedness—placing the sign of the cross upon their breasts. And since they serve gluttony and drunkenness, showing themselves very dishonorable in other things, they gravely scandalize the clergy and people, since those laymen perform the offices of priories and are set over both clerics and priests, and they not only exist disobedient to the bishops but also rashly presume to claim for themselves certain immunities as though granted to them by the Apostolic See. For* when one of them, *recently* striking the vicar priest in a certain baptismal church conferred upon them by your predecessor, had polluted the church itself by the shedding of blood, you prohibited divine offices from being celebrated there until reconciliation; but nevertheless they celebrated divine offices in it. *Moreover, they receive priests coming to them from anywhere, concerning whose manner of life and ordination there is absolutely no certainty, to celebrate divine office for them, the assent of the bishops not having been sought at all.* Other priests, suspended from office by their bishops *according to the requirement of their deserts*, those same men, although they are laymen, restore to the performance of divine offices. Furthermore, they endeavor so to emancipate certain persons who dwell with their wives in their own houses, because they confer something of their own upon them annually, that they are by no means bound to answer anyone according to the law of the land concerning the things objected against them. But because one who abuses the power permitted to him deserves to lose his privilege, *by apostolic writings* we command your fraternity that, if you find any clerics, *or priests*, or laymen falsely marked with the cross by the said brothers for collecting alms, then throughout your whole province, *supported by our authority*, you prohibit those by whom they are established to have been sent from the office *of this kind* of exhortation. Those sent *also*, if they were laymen, you shall strike with the sword of excommunication; if they were clerics *or priests*, you shall suspend them from office and benefice, with no benefit of privilege or remedy of appeal whatever prevailing. Enveloping with the same penalty of suspension those whom you shall know to have celebrated divine things in the aforesaid church, subject to you by diocesan law, after your interdict, you shall not permit divine offices to be celebrated in it until it has been reconciled, *as the sacred statutes command*. Priests also suspended by their bishops and rashly restored by the aforesaid brothers to their offices you shall, *supported by our authority*, return to the same sentence of suspension. But those whom they assert not to be bound for the aforesaid cause to answer others according to the law of the land we are unwilling to have excused; rather, you shall compel them to answer, the obstacle of appeal being removed. [*Given at the Lateran, on the fifth day before the Ides of December,* 1198.]

Chapter XII

Latin source headnote: The contents of a lost instrument can be proved through witnesses who read it through, if they depose concerning its tenor and that it was without defect. It says this, and the case is nowhere else so clear.

The same, to the Abbot and Convent of Saint Peter of Gubbio.

When formerly we were established at Perugia and you, son abbot, humbly presented to us the privilege of Pope Lucius *of good memory, our predecessor,* and petitioned that it be renewed, it was not brought to effect on account of the contradiction of *our venerable brother Mark,* Bishop of Gubbio, *who arrived at that time,* asserting that this redounded to his prejudice. [*And when each of you complained of the other in our audience, we committed the cause to be heard by our venerable brother the Bishop of Assisi under this form: that he should take care to recall you and the said bishop to concord; otherwise, he should hear the things alleged on both sides and, reducing everything to writing, faithfully disclose to us the course of the matter. When he had inspected the privileges granted to you by the Apostolic See and understood that your monastery pertained specially to the Roman Church, he did not judge, as we have learned, that he should proceed further in the cause. Subsequently, at the petition of the aforesaid Bishop of Gubbio, our letters concerning the mutual questions were directed to our venerable brother the Bishop of Cagli and our beloved son Ar., Abbot of Saint Mary of Vallis Pontis. But because, while the judgment was pending, John the monk carried off the privileges, other charters, and the treasure of your monastery, it was necessary for you, abbot, again to labor to come to our presence, where you obtained letters providing that through a sentence of excommunication those who knew anything concerning the loss of the privilege should be compelled to speak the truth. But because not even thus could you recover the lost privileges, you returned to us anew.*] Therefore, when you, *with your witnesses,* and the proctors of the aforesaid *Bishop of Gubbio* were established in our presence, we commanded *our beloved son* B., Cardinal Priest of the Basilica of the Twelve Apostles, to receive *diligently* concerning the loss and tenor of the privileges the witnesses whom you should deem fit to produce. He, *as the diligent executor of our command, with the aforesaid proctors present,* faithfully reduced to writing the depositions of ten sworn witnesses. When their depositions had been published, the *said* proctors sought an adjournment for producing witnesses *of the bishop,* through whom they might discredit those introduced by the opposing party; which adjournment, *a peremptory term having been fixed,* we determined should be granted to them under this tenor: that they should prove before the Apostolic See whatever they wished, where the other party had assumed the burden of proof. (*And below:*) We, however, knowing clearly, both through the depositions of the witnesses and *through* the assertions of certain of our brothers, that the tenor of the said privilege had been such—namely, that your monastery pertained to the Roman Church with no intermediary; that no bishop was permitted to pronounce excommunication against that monastery and its churches, so that the brothers serving the Lord there, free from the power of all, might enjoy the favor of the liberty of the Roman Church; and that no mention of the diocesan bishop was contained in them—and *nevertheless* also attending to this: that, *as we learned clearly from the statements of certain witnesses, and as many of our brothers who were present at that time recalled,* when you, son abbot, in the time of Celestine *of good memory,* our predecessor, had come to his presence, he, after inspecting the privileges of your church, admitted you to the kiss as one not bound, although you were said to have been excommunicated by the Bishop of Gubbio, which he is presumed not to have done unless he had known that your monastery pertained specially to the Roman Church, *on the common counsel of our brothers we decree that it is to be pronounced* that the privilege of Pope Lucius *of good memory* [*our predecessor*], which appeared without defect of bull,

charter, or letter when it was shown to us, had that tenor which it is known through the depositions of witnesses and assertions of our brothers to have possessed. [*Therefore, we decree, etc. Given at the Lateran, on the second day before the Kalends of June,* 1199.]

Chapter XIII

Latin source headnote: Renewal of privileges does not bestow a new right, but preserves the ancient one. It says this as regards the title.

The same, to the Bishop-elect of Châlons and the Abbot of Trois-Fontaines.

It was intimated *to our ears* on behalf of the abbess and sisters of the church of Iotrensis that *our venerable brother* the Bishop of Meaux, on occasion of a certain commission obtained by letters to delegated judges, in which no mention was made of their privileges—which declare that they and their churches, and the clergy and people of Iotrensis, look to the Apostolic See with no intermediary, privileges of which he was not ignorant—began to molest them gravely by demanding from them and from the clergy and people of Iotrensis, *who according to the privileges of the Apostolic See enjoy a similar liberty*, obedience and complete subjection *to be rendered to himself*. [*Whence, when they were cited by the same judges, not by joining issue but rather by excepting against them, they said that we were their special lord in judgment and that they owed no obedience to the Bishop of Meaux, because, when our venerable brother O., Bishop of Ostia, then legate of the Apostolic See, had diligently inspected their privileges and learned that their monastery pertained to the right and property of the Apostolic See, in our stead he bestowed the gift of benediction upon the abbess herself, who at that time had newly been elected, and caused her specially to promise obedience to us and the Roman Church, requiring and receiving an oath from her for this.*] But when the judges *and their assessors* burdened them greatly [*in that they denied them a delay for exhibiting the privileges of liberty, although their proctors offered them an oath that they did not then have the privileges, nor had it been procured by fraud that they had not carried them to their presence, and they were unwilling to give them brief adjournments,*] they fled to the benefit of appeal, [*excepting against the same judges: both because they asserted that they were suspect, and especially the Bishop of Paris himself, who had a similar cause against the beloved son the Abbot of Saint Geneviève, and therefore they believed that he was unwilling to give any sentence other than one which he would wish another to give for himself; and because, when he had first wished to pronounce an interlocutory ruling without his fellow judge, and the proctors of the abbess said that they wished his fellow judge to be present, he had answered them that the latter would profit them in nothing, because, when he came, he would do nothing except what the bishop himself wished; and because they afterward denied them reasonable adjournments; and because on occasion of those letters they ought not to proceed in the cause, for the reason that by those letters the Bishop of Meaux demanded that the obedience owed—which the abbess is bound to render to the Roman Pontiff alone—be rendered to him by her and by the clergy and people of Iotrensis, although it was established by the privileges of the Roman Church that they were bound to him in nothing, and no mention of their privileges was made in those letters.*] But the *same* judges, not deferring to the appeal nor having compassion upon the frailty of their sex, pronounced sentences of excommunication against the abbess and of interdict against the clergy and people of Iotrensis. Indeed, when the envoys of the church of Iotrensis had recounted these and many *other* things in our presence, *by which they said that the women and their people had been burdened contrary to the liberty granted to them*, they showed us an apostolic privilege through which it was established that the church of Iotrensis pertained specially to the Roman Church. But we, detaining the same envoys longer on account of the aforesaid appeal, because in the end no suitable respondent appeared to defend the opposing party, *although afterward a certain simple envoy presented to us concerning this the letters of the*

aforesaid Bishop of Paris and Abbot of Lagny, determined that the privilege of the Apostolic See granted to the church of Iotrensis was to be renewed, yet in such a way that through its renewal no more right should accrue to that church than it obtained through the privileges of our predecessors, since through this we wish not to grant it a new right but to preserve the ancient one. [*Because, however, etc. Given at the Lateran, on the fourth day before the Ides of January, in the fifth year,* 1203.]

Chapter XIV

Latin source headnote: A church using a double privilege of exemption, although it fails under one, can nevertheless aid itself by the other and prevail; nor is an exempt person bound to promise obedience to the diocesan bishop. Nevertheless, by force of exemption he cannot construct a church in a non-exempt place without the license of the diocesan bishop; and, if an exempt person in fact constructs a church in a non-exempt place, it yields to the right of the bishop.

The same, to the Bishop of Coimbra.

When formerly *you came to the Apostolic See, and*, because of the questions which you had against the *beloved sons*, the prior and canons of the monastery of Santa Cruz, concerning which appeal had been made to our hearing, you made a longer stay, because no suitable respondent appeared for the other party, we determined that a certain term should be fixed for them, at which they should come or send representatives to receive a definitive sentence concerning all the privileges and liberties which they said they possessed from the Roman Pontiffs or from M., formerly Bishop of Coimbra, and concerning the other questions brought against them by the church of Coimbra. *But so that the truth might appear more easily, we commanded under the same strictness that the authentic and original instruments with their bulls be exhibited to us by the same term.* Meanwhile, either party was permitted before our beloved sons, the Abbots of Alcobacia and Serra, and F. *Menende*, monk of Alcobacia, to whom the cause had previously been delegated *under a certain form, and witnesses produced on both sides*, to allege and prove anything else which it should judge ought to be alleged and proved. [*We took care, however, to assign the aforesaid term to them as peremptory, so that, if they should perhaps contemn to come or send representatives at it, we would nevertheless take care to proceed in the same matter so far as we could by law. We also commanded the same judges that, if they proceeded by the will of the parties, after receiving other witnesses, if they should judge that any were to be produced concerning the privileges, liberties, and other articles, and bringing the matter as far as definitive sentence, they should send all the acts under their seals to the Apostolic See. And when afterward you had come to the Apostolic See, two canons of Santa Cruz arrived who neither possessed letters of ratification nor had been appointed proctors for this cause. Whence we, regarding the party of Santa Cruz as contumacious, as it was, since it had sent to us not suitable respondents for the cause but envoys of whatever sort, commanded that the attestations received by the delegated judges be opened, so that at last, if the merits of the cause were clear to us, we might pronounce sentence. But you, wishing to render favorable to you the mind of our most dear son in Christ, the illustrious ... King of Portugal, who had been moved against you on this account, agreed with the aforesaid canons under this form: namely, that the same cause, both concerning the principal and the incidental matter, the obstacle of appeal being removed, should be committed for termination to our venerable brother the ... Bishop of Zamora and our beloved sons the ... Dean of Zamora and the Dean of Orense; yet so that the party of Santa Cruz might, within forty days after receipt of our letters, produce instruments and witnesses concerning those articles in which, during its absence, you had produced your witnesses. Otherwise, it would not be permitted to challenge the attestations already received or to object that there had been proceedings in this cause although issue had not been joined. We therefore commanded the said bishop and deans by way of precept that, if the party of Santa Cruz wished to ratify*

what had been done by the said canons, after receiving its witnesses and instruments concerning the aforesaid heads —if, nevertheless, it should judge that these were to be exhibited within forty days after receipt of our letters—and after your attestations had been published according to the aforesaid form, they should proceed in the cause and terminate it with a due conclusion, appeal being set aside. But if perhaps it were unwilling to ratify what had been done by the aforesaid canons, since its contumacy would be understood not to have been purged but increased, they should proceed against them as contumacious persons and, after diligently inspecting the attestations received, decide the cause itself, appeal being removed, and order the sentence which they should render to be executed. But because this cause was to be tried outside the kingdom of Portugal, they should first take care to assign the parties a suitable term by peremptory edict, lest because of the remoteness of the places and the distance of the persons you should be compelled to labor longer. And if they could not cite the party of Santa Cruz through others, they should take care, after prior admonition, to compel through ecclesiastical censure, appeal being removed, its canons dwelling in the kingdom of León to present to it the letters of citation, notwithstanding any letters prejudicial to truth and justice which might appear to have been obtained from the Apostolic See. But if not all could take part in executing these things, the bishop should nevertheless execute them with one of the others. When the parties had been summoned to a certain term and had assembled at it, the aforesaid Bishop and Dean of Zamora, because the Dean of Orense could not be present, took care to ask the Prior of Santa Cruz whether he ratified what had been done by his canons. It was answered on his behalf that there was no place for the question, since he was prepared immediately to prove that our rescript had been obtained through falsehoods in the petitions. For when the Dean of Coimbra had brought back against the monastery of Santa Cruz eleven letters of commission to the aforesaid Abbot of Seira and the beloved son P. Froildiz, monk of Alcobacia, although the party of the church of Santa Cruz had at first obtained the requested adjournments, nevertheless, because on the second occasion it could not obtain individual adjournments for the individual commissions, it appealed on this account to our hearing, although appeal was prohibited by our letters. Finally, that party and the Dean of Coimbra took care to submit the matter by compromise to the aforesaid King of Portugal, the Priors ... de Costa and ... de Rimaran., and the aforesaid judges, two sureties on either side being obligated in the name of a penalty; and thus the prior renounced the appeal with the assent of his own men, while the dean renounced our letters. Furthermore, twelve canons on either side swore to render testimony to the truth concerning the whole matter. Therefore, after the witnesses had been received and their depositions reduced to writing, the king was unwilling to take part, but committed his functions to the aforesaid Priors ... de Costa and de Rimaranes, and proposed to the parties that they pursue their right through the Roman Church or through others, since a cause of this kind did not pertain to him. But you alleged before the aforesaid Bishop and Dean of Zamora that neither the renunciation of the Dean of Coimbra, who had been appointed proctor not to renounce but rather to act, nor even the compromise had been valid: both because the judges ought not to have been arbitrators; because ecclesiastical matters had been submitted by compromise to a layman; and also because the same man substituted others for himself, although concerning this there had been no treatment at all in the compromise. But the party of Santa Cruz alleged on the other side that the compromise had been valid, because it said that we had pronounced that an action could be brought concerning its penalty, adding that you had ratified the dean's renunciation and had obtained the aforesaid letters by suppressing this, although you could by no means have obtained them if you had more fully disclosed the truth concerning this to us. And although the same party introduced four witnesses who said simply and absolutely that you had ratified what had been done by the dean, nevertheless six witnesses whom you had introduced took care to depose that you expressed a ratification of this kind not simply but conditionally—namely, if the matter were concluded according to the attestations prepared. Moreover, John Caesar, canon of Santa Cruz, had been introduced as a witness, and Michael Petri and others whom you had introduced deposed under oath that we had caused the whole truth of this matter to be investigated through the first delegated judges and all things

to be reported to us, and that, after everything had been diligently inspected, we had thus pronounced that your claim was not impeded by the objections. The same John and Michael Petri also, when asked whether you had ratified the dean's renunciation, said that they knew absolutely nothing concerning this; but on the part of Santa Cruz it was objected against them that they had been contrary to themselves, since they had first said that they reported the whole truth of the matter to us and secondly that they had made no mention of the ratification, which was as it were the principal part of this matter. But you said that the witness whom the party of Santa Cruz had introduced was deservedly to be believed against it. The judges, therefore, attending that appeal had been prohibited in our letters, that the condition under which you had said you ratified what had been done by the dean had not occurred, and that, after the truth of the whole matter had been inspected, we had pronounced that your cause ought not to be impeded by the things which the canons of Santa Cruz had objected; and also considering that the party of Santa Cruz had more fully discredited the aforesaid John, whom it itself had produced and who instructed the judges themselves concerning the things done before us, ruled interlocutorily on prudent counsel that proceedings in the matter which had been delegated to them could not by law be impeded on occasion of the alleged falsity. Then, when they wished to proceed in the principal matter, the Prior of Santa Cruz alleged manifold causes of recusation; because the judges, regarding them as frivolous, were unwilling to admit them, the prior, neglecting every defense of his cause, contumaciously absented himself. But we also afterward regarded the aforesaid recusations as invalid for this reason: that the contumacy of the party of Santa Cruz was not diminished but increased.]

But the judges, believing that the cause had been sufficiently conducted, *after diligently inspecting the attestations and arguments of both parties*, condemned the monastery of Santa Cruz to pay you the expenses which you swore that you had incurred over four years on occasion of this matter, *and which reach the sum of fifty marks of gold, on the counsel of prudent men*. By their sentence they invalidated the liberty which the said M., Bishop of Coimbra, had conferred upon the monastery of Santa Cruz *to the enormous detriment of the church of Coimbra*, the assent of the canons having been extorted through *the bishop's herald and* the king's porter. Furthermore, because the same M., your predecessor, had been a canon regular and had given to the aforesaid monastery two thousand marabatini which he had acquired after he had already been promoted as bishop, the judges condemned the [*monastery*] itself to restore them. Moreover, all the tithes *as well as* the churches which the monastery, without the assent of the Bishop of Coimbra, had *received from the hand of the king or of others, whether laymen or clerics, and which it had founded by its own authority in Latren. or other places contained in the attestations*—[*namely, the chapel of Saint John constructed in the suburb of Coimbra; the churches of Toaveiro de Laurizal, de Mira, de Sorenes, Saint Facundus, the hermitage of Saint Martin de Agoacla, the churches de Mortedi, de Travancha, Saint Marina in Sena, Saint Roman with both rights, Saint Sebastian, and all the churches founded in the castle of Seirene and its boundaries; and also the inheritances contained in the attestations by right of property, namely, the inheritances of Lavaes with its church of Buarchos, de Cassaira, de Eimedi, de Saint Verissimus, and de Cabima*]—because the party of Santa Cruz had opposed the proofs made against it neither by prescription nor by another defense, they judged were to be recalled to the right of the church of Coimbra with the fruits of the intervening time, [*commanding that the two bodies of dead persons who had died excommunicated be exhumed from the cemetery of the monastery and removed altogether from the monastery. They also decreed that the parts of the parishes of Saint James and Saint Justa which had been divided by royal command without the authority of the Church and added to the chapel of Saint John were to be reduced to the state of their first integrity, and that the chapel of Saint John, so far as pertains to parochial right, was to be subjected to the jurisdiction of the church of Coimbra. They judged that the portion from the goods of the deceased was, according to the custom of the land, to be restored to those churches from which the living had received the ecclesiastical sacraments. They further*

judged that the vineyard which formerly Dominic Rozocida had held as a prestimony from the church of Coimbra and had conferred upon the monastery of Santa Cruz was to be recalled to the right of the church of Coimbra, and that the church of Coimbra itself was to be restored to the right of possession—to which, as had been proved by witnesses, the canons of Santa Cruz had been accustomed to go every Sunday. They similarly decreed that for the houses of the New Gate, in which the church of Coimbra formerly had parochial right, the monastery of Santa Cruz should compensate it with as much right in another suitable place as the church of Coimbra had lost in the aforesaid houses. But they took care to adjudge to the monastery itself the church de Quiaios, which the aforesaid M., Bishop of Coimbra, had granted to the monastery of Santa Cruz with the assent of his canons. They decreed that the portion of the town de Pavea—although it had been purchased in the name of the church of Coimbra from the money of M., formerly its prior, and afterward left to the same church by testament—was to be restored to the monastery, with the right of ownership of the church of Coimbra preserved, because you nevertheless occupied the monastery while it possessed that portion. But the remaining portion of the town itself, which Pelagius F. had formerly conferred upon the monastery of Santa Cruz, they adjudged to the monastery itself by full right. Furthermore, they judged that three farmsteads in Saint Ioanninus were to be restored to the monastery, with the question of ownership of the church of Coimbra preserved, absolving the monastery from the claim for twelve measures of wheat which you had sought.]

Finally, *when you and the other party had come on account of this to the Apostolic See*, the proctor of the monastery *of Santa Cruz* alleged that the sentence was neither valid nor binding. Even if the aforesaid sentence were otherwise binding, nevertheless, because the monastery had been undefended, *as the judges themselves protested through their letters*, and the privileges of liberty had not been exhibited before them, lest the offense of a person redound to the damage of the church, it ought to be admitted to the exhibition of its privileges; which it petitioned should be granted to it from the accustomed kindness of the Apostolic See. We, therefore, attending that the same privileges not only supported the liberty of the monastery but also expressed our right and defended the justice of the Roman Church, lest the injury of the monastery redound against us, determined that its party was to be admitted by grace to exhibit the privileges. *But so that we might understand more fully the truth concerning the judges' proceedings, we commanded that all the acts, just as they had been done, be exhibited to us by both sides before us.* [*The proctor of the monastery therefore alleged that the aforesaid M., Bishop of Coimbra, had granted to the monastery of Santa Cruz, with its parishes, parishioners, and confraternity members, full liberty from every episcopal right and exaction; that he had reduced his grant to writing; and that he had strengthened it by the subscriptions of the canons of Coimbra, since they had furnished assent to this. Even if a grant of this kind had perhaps been invalid of itself, nevertheless through the confirmation of Pope A. of happy memory, our predecessor—who had confirmed it by his privilege from certain knowledge to such an extent that he not only expressed its tenor but used its words—it had obtained the strength of perpetual firmness, since Celestine afterward imitated him concerning this and confirmed that grant just as he had confirmed it. But on your behalf it was answered to this that the aforesaid grant was not binding: both because the said bishop could not with effect burden his church so enormously; and because the assent of the canons had been surreptitiously obtained through the frauds of him who, in order to draw them more easily to his assent, asserted that the monastery had always existed free, and had been extorted through the power both of him and of the king, since the king's porter threatened the canons with proscription of their property and the bishop's herald with exile. Moreover, the tenor of that grant could not be fully established, nor was credence to be given to the writing which the party of the monastery presented, since, according to what certain witnesses had deposed, the page of that grant which Michael made had been erased in several lines, and each of the canons who had subscribed had subscribed with his own hand; but in the writing which had been*

exhibited to us, no erasure whatever appeared and all the subscriptions had been written by the same hand. Nor did it harm your argument that the aforesaid Alexander, our predecessor, had confirmed a grant of this kind so as to use its words, because, although he was aware of the words, he was nevertheless ignorant of the facts, since he did not know that the assent of the canons had been extorted and that the page of the same grant had been altered. Moreover, the other party replied that, even if neither the grant of this kind nor its confirmation had been binding, the true and ancient liberty of the monastery could nevertheless be established through the privileges, since Pope Innocent of good memory, our predecessor, had received it into the guardianship and protection of blessed Peter and, when he declares it tributary, adds: "But as a token of this liberty received from the Roman Church, it shall pay two bezants each year to us and our successors." Lucius, Eugenius, and Adrian of happy memory expressed this in their privileges, although the authentic instruments of Lucius and Eugenius were not presented to us. But against this you, brother bishop, alleged that our said predecessors had granted no liberty whatever to the aforesaid monastery, but had only received it under protection, no mention of liberty having been made except where it is said: "But as a token of this liberty received from the Apostolic See"; and that this could not harm your church if it were subtly weighed. For since the pronoun "this" demonstrates nothing there to the eye, but is known rather to make a demonstration to the understanding, lest the understanding be altogether foreign if it is not formed from the things above, the pronoun itself seems to make, as it were, a relative demonstration and to call the protection and confirmation of which mention is made in the preceding part "liberty," although a certain liberty is conferred together with confirmation: namely, that, according to the sentence of the aforesaid Alexander, no one may be sued concerning those things which have been confirmed to it by the Apostolic See except by the authority of the Apostolic See; and thus what is read in the privilege can be understood concerning liberty of this kind. That this ought to be the meaning is apparent from the privileges themselves, since Innocent both expresses that the reverence of the diocesan bishop is preserved and Lucius and Eugenius, after the protection had been granted and the confirmation of certain churches expressed, preserve his right for the diocesan bishop. Moreover, the other party alleged on the opposite side that, if the aforesaid Innocent had wished to call "protection" by the foreign word "liberty," he could have put "protection" where he put "liberty." Nor does what is alleged concerning the demonstrative pronoun harm its position, since in ancient times the Apostolic See received into special protection and its own guardianship only those churches which it regarded as special and its own. Whence, because both through the first chapter, where the monastery is received into the guardianship and protection of blessed Peter, and through certain other things that follow, liberty is known to have been granted to the monastery itself, the demonstrative pronoun points to the understanding of that liberty, better understood than expressed. For far be it that the Apostolic See should be believed to have wished to circumvent the monastery by receiving a census from it under the name of liberty while granting it either no liberty or a half-full liberty, as was alleged on the other side. Nor does it obstruct, but rather supports, its position that the often-mentioned Innocent willed the reverence of the diocesan bishop to be preserved, since from the fact that he expressly reserved reverence to him, it is understood that he denied the other things. But he wished reverence to be exhibited to him in this: that, as the Roman Pontiffs who succeeded him, wishing to interpret what had been obscurely stated, expressed in their privileges, the canons of Santa Cruz should receive chrism, holy oil, consecrations of altars, and certain other things expressed in the same privileges from the diocesan bishop, if he were catholic, possessed the grace and communion of the Apostolic See, and wished to furnish them gratis and without any depravity. Nor does it similarly harm their position if Lucius and Eugenius, after enumerating certain churches, said that the right of the diocesan bishop was preserved, since they did not understand this concerning the head but concerning the members, just as Adrian also reserved canonical justice to the diocesan bishops. This could not be understood concerning the head, since it is established that none of the churches has several diocesan bishops. But Alexander and his successors, so that they might altogether remove the scruple of doubt concerning this, made mention only of the authority of the

Apostolic See. Moreover, if neither so many nor such great things sufficed, prescription alone protected the church of Santa Cruz. We therefore, having heard and understood these and the other things alleged on both sides,] accordingly distinguishing between the liberty granted to the church itself by the aforesaid bishop and the liberty which the Apostolic See granted to it long before the time of that bishop, *as is apparent from the aforesaid privileges*, because it was *evidently* established to us that the assent of the canons had been extorted in the bishop's grant, that the page of the grant had erasures in several lines, and that the individual subscriptions had been written by the individual hands of those subscribing, but that the writing which had been exhibited to us neither displayed an erasure nor was varied by diverse hands in the subscriptions, but rather had been written from first to last by the same hand, we decree invalid and void the liberty granted by the bishop himself through extortion, confirming on this point the sentence of the delegated judges. But because we clearly recognized from the privileges that our aforesaid predecessors had granted a privilege of liberty to the church of Santa Cruz, and that it had been in possession of that liberty for so long that, even if other grounds ceased, it would have prescribed, we confirm by apostolic authority the liberty granted to it by our predecessors, imposing silence upon you concerning this. But on this point we derogate in nothing from the sentence of the delegated judges, since they did not take cognizance of this liberty.

[*After these things, however, the proctor of the church of Santa Cruz alleged before us that, when the ... Duke of Portugal of illustrious memory had granted to that church all the churches which either had already been founded or were to be founded in the future in the castle of Leiren and its territory, and all ecclesiastical rights, a public instrument having been drawn up concerning this which he said was called a "testament" by the customary word of the land, and both the Archbishop of Braga, metropolitan of the province, and the Bishop of Coimbra had subscribed a grant of this kind, the delegated judges, without inspecting the privileges of Santa Cruz, although the cause had not been specially delegated to them concerning the same churches, pronounced an unjust sentence against the church of Santa Cruz. And although the Bishop of Coimbra, as diocesan, subscribed the aforesaid grant because at that time the Saracens held the city of Lisbon, to whose diocese the churches are known to pertain, nevertheless, when that city had afterward been restored to the Christians through the industry of the duke himself, the Bishop of Lisbon, as true diocesan, confirmed by his own privilege the donation of the ... duke. Pope Adrian, diligently attending to this, determined that all the churches situated both in the castle of Leiren and in its territory, with all things pertaining to them, just as the charter of the duke himself and the confirmation of the aforesaid bishop contained, were to be confirmed to the church of Santa Cruz by his privilege. But on your behalf it was alleged on the other side that the duke's grant was not binding, since a layman did not possess the power to confer ecclesiastical rights, and especially spiritual ones. Nor is it valid that the Archbishop of Braga and Bishop of Coimbra are said to have subscribed in the duke's charter, since neither was the charter itself drawn up by a public hand nor do their seals hang from it, for which reason it altogether forfeits credit. Nor does it harm your position that the aforesaid Pope Adrian confirmed to the church of Santa Cruz the aforesaid churches with their appurtenances according to what is contained in the charter of the duke himself and the confirmation of the Bishop of Lisbon, since he believed that the duke himself granted the right of patronage and the temporal things, and the bishop, as diocesan, the spiritual right. But it is established from the confession of the other party and from the tenor of the privileges of the aforesaid Alexander and Celestine, our predecessors, that the aforesaid churches pertain to the diocese of Coimbra, since, after they and certain others are enumerated in their privileges, it is added that they all lie in the episcopate of Coimbra. Whence, since the other party used those privileges in its own favor and also procured them, it neither ought nor was able to disapprove them in this matter. Therefore, Adrian's privilege had not conferred a new right upon the monastery but had confirmed one possessed; whence the grant of the duke himself, which had previously been invalid,*

had not received validity from his confirmation. But against these things, the other party replied that the church of Santa Cruz had possessed those churches and the church of Saint John situated in the suburb of the city of Coimbra for so long that it was able to defend itself by legitimate prescription, since even from the time when Adrian had confirmed those churches to it and when they could possess them in good faith, until the time when the suit was joined, forty years and several months had elapsed. Therefore, after everything had been diligently inspected, it was established to us also from the form of the sentence of the aforesaid judges that the monastery of Santa Cruz had obtained possession of the aforesaid churches in the time of the often-mentioned duke, since the judges commanded that all the churches which the monastery had received from the hand of the king be recalled to the right of the church of Coimbra, and receipt is known to pertain to possession. It was also established from the form of your petition, since you petitioned that they be restored to you, that the monastery still possessed those same churches. It was similarly established that it possessed them in the intervening time and that, from the time of the aforesaid Adrian, who had confirmed them to it, a space of forty years had elapsed at the time the suit was moved. And although the other party asserted in judgment before us that G. of good memory, Cardinal Deacon of Saint Angelus and then legate of the Apostolic See, had imposed silence upon you concerning all these matters, and thus it might seem that the suit had been joined before him, nevertheless from the depositions of the witnesses the truth was fully disclosed to us: namely, that neither had the suit been joined nor a sentence promulgated, since, after inspecting the privileges of the Roman Pontiffs, he was unwilling to hear you concerning these things. Therefore, since it is established that long before forty years, and afterward during the intervening time, the monastery of Santa Cruz possessed the aforesaid churches, and now also possesses them, and no interruption is proved on the other side, on the counsel of our brothers we adjudge both the aforesaid churches of Leiren and the church of Saint John of Coimbra to the monastery of Santa Cruz, imposing silence upon you concerning them. In this also we do not derogate from the delegated judges, since Adrian's privilege, by whose authority the canons of Santa Cruz could believe themselves possessors in good faith, was not exhibited before them, nor were the other instruments. But concerning the fact that they condemned the same church to pay you, in the name of expenses, fifty marks of gold and two thousand gold coins which the often-mentioned M., Bishop of Coimbra, had conferred upon the church of Santa Cruz, by the will of the parties we took care so to moderate their sentence that the monastery is bound to pay you twenty of the fifty marks of gold and one thousand of the two thousand gold coins.]

And since we confirm the liberty granted to the monastery by our predecessors, we decree that the monastery is not bound to the right of profession, which is contrary to liberty, not derogating from the delegated judges, to whom the privileges of liberty had not been presented. *Moreover, concerning the fact that the same judges decreed that for the houses of the New Gate, in which the church of Coimbra had possessed parochial right, the monastery should compensate it in another suitable place with as much as it had lost in the aforesaid houses, we wholly correct the sentence which they rendered, judging that the monastery is not bound to this.* But in other matters we confirm by *apostolic authority* the sentence rendered by the aforesaid judges *both* for the church of Coimbra *and for the monastery of Santa Cruz*. [*Therefore, let no one, etc. Given at Ferentino, on the sixth day before the Kalends of July,* 1203.]

Chapter XV

Latin source headnote: Prescription does not run against the privileges of a church in a period shorter than forty years. It says this according to the true understanding.

The same, to the Bishop and Master G. of Limoges.

When the *beloved sons Master Zacharias*, proctor of the abbot and convent of Nouaillé on the one side, and *Brother Peter*, proctor of the Templars of Tocen., on the other, came to our presence, *we appointed our beloved son I., our subdeacon and chaplain, as auditor, before whom* the proctor *of the abbot and* monks proposed that, since they had peacefully possessed the tithes of the lands of Sarcole for a long time before those lands came under the *power and* lordship of the Templars, and *also*, after the Templars acquired the aforesaid lands, had peacefully possessed the tithes from them for forty years and more, the Templars now do not fear to withhold those *tithes* from them, *inflicting serious injuries upon them in other matters as well,* [*and that, although they had obtained our letters concerning these things and at one time the matter had been submitted by compromise to arbitrators, through the obstructing malice of the Templars they had been unable thus far to obtain their right. On the other side, however, the proctor of the Templars proposed that, since they were fortified by privileges of the Roman Pontiffs that they should not be bound to pay tithes from lands which they cultivate with their own hands or at their own expense, the aforesaid abbot and monks did not cease unduly to molest them concerning this, while proving exceedingly injurious to them in other matters. And when we had determined that the cause which is disputed between them and the aforesaid monks concerning those tithes was to be committed to our venerable brothers the Archbishop of Bourges and the Bishop of Clermont, while the question was being handled before them, certain monks, having associated with themselves a multitude of armed men and violently entered the Templars' lands, carried away from their crops according to the judgment of their own will, burning the remainder with fire.*] *Therefore, after these and the other things which were proposed before the aforesaid chaplain had been more fully understood, because full proof concerning them could not be made to us,* we command your discretion *by apostolic writings* that, *after the truth has been more fully investigated,* if the abbot and monks sufficiently show that they continuously received the tithes from the aforesaid lands from the Templars for forty years without litigation, you compel the Templars, *appeal being set aside*, to render those *tithes*. For since during so long a time they paid tithes contrary to the privileges granted to them, they are presumed tacitly to have renounced those privileges. But if they *perhaps* fail in their proof, absolve the Templars from their claim, imposing upon them, *appeal being set aside*, perpetual silence concerning this; *concerning the other matters, however, hear what they may determine to propose on either side, and establish what shall be just, appeal being set aside, causing what you decree to be firmly observed through ecclesiastical censure.* [*Given at Ferentino, on the Kalends of July, in the ninth year,* 1206.]

Chapter XVI

Latin source headnote: One exempt by reason of a certain thing or a certain place is not judged exempt with respect to a further thing or place. It says this, and it is a notable and highly citable text.

The same, to the Bishop of Langres.

Since the chapel of the *noble man*, the Duke of Burgundy, is said to enjoy a privilege of this kind, that no archbishop or bishop may dare to promulgate sentences of suspension, excommunication, or *even* interdict against the persons of the canons of that chapel, *the dean of the Christianity and* certain *other* canons of the aforesaid chapel, who hold parish churches from you, on occasion of the aforesaid privilege say that they are so exempt even in those matters whose jurisdiction pertains to you that, however gravely they may sometimes offend, they refuse to be subject to your correction and sentence. *Whence you humbly petitioned to be instructed by us as to how you should proceed against rebels of this kind.* Therefore, *by the authority of the present letters*, we command your fraternity that, insofar as they are exempt by reason of that chapel, you reverently defer to the apostolic privileges; but insofar as, by reason of the parish churches or otherwise, they are known to fall within your jurisdiction, freely

pursue against them the duty of your office. [*Given at Rome, at Saint Peter's, on the fourteenth day before the Kalends of March, in the ninth year,* 1206.]

Chapter XVII

Latin source headnote: By an exemption granted to a monastery, chapels subject to it are not considered exempt.

The same, to the Abbot and Brothers of the monastery of Evesham.

From the mouth of the one sitting upon the throne proceeds a two-edged sword, because from the mouth of the Roman Pontiff, *who presides over the Apostolic See*, a most upright sentence ought to go forth, which spares no one contrary to justice but renders to each what is his own. Therefore, when a controversy was being disputed between you and *our venerable brother* the Bishop of Worcester concerning the subjection and liberty of your monastery, *and we had committed it to delegated judges for termination, they referred the same cause, sufficiently instructed, to our presence, fixing for the parties a certain term at which they should present themselves before us with instruments and attestations to receive sentence. Therefore, when the parties had been established in our presence through suitable proctors, we furnished them a free and benign audience. And indeed* the proctor of your monastery proposed that the monastery itself had existed free and exempt from its very foundation; to prove this he introduced privileges of our predecessors, one of Constantine and another of Alexander, and also indulgences of Clement and Celestine, the continual use of which from long past times he endeavored to show through the depositions of witnesses. [*For in the first privilege of Constantine it was expressly contained that Egwin of holy memory, Bishop of Worcester, coming to the Apostolic See, reverently related to our aforesaid predecessor a certain vision in which blessed Mary manifested herself to him; and at that time the English kings Kenred and Offa, with whom the said bishop visited the thresholds of the Apostles, from their own goods bestowed by royal liberality many benefactions at the place shown in the vision, in the presence of our same predecessor, which he confirmed by apostolic authority, so that in the same place a congregation of monks might be established according to the rule of blessed Benedict—which at that time flourished less in those parts—for the honor of the divine name. Whence the aforesaid Pontiff commanded Brithwald, Primate of Britain, by apostolic writings, that, after a council had been assembled, he should establish the fold divinely shown, fortified by apostolic authority and endowed by royal liberality for himself and his successors, especially enjoining upon him, with the aforesaid Bishop Egwin assisting, the care of the souls of that church, so that by the power delivered to him he should defend it from every assault of invaders and incursion of tyrants; but if anything of the sinister part should be discovered to arise there, it should be reported rather to the ears of that primate than that the holy place should be unjustly corrupted through the secret sentence of anyone. Therefore, since the aforesaid kings endowed that place with liberty, our same predecessor also endowed it by the authority of the Apostolic See, so that no man of whatever order should attempt to corrupt and diminish what he had established. In the second privilege of the same Pope Constantine we perceived it to be contained that by apostolic writings he commanded the aforesaid primate to protect and foster the churches of God established throughout Britain, among which he subjected especially to his dominion that church which had most recently been established by the venerable man Bishop Egwin by apostolic and royal authority, so that he should take care to render it free in perpetuity from every assault of adversaries; establishing that the same place should be free under the monarchy of its own abbot from every tyrannical exaction, and that no man of whatever order should presume to bring any burden upon it. The abbot, moreover, according to canonical authority, shall be elected by the brothers either from the monastery itself or from the parish of the Wiccians, and, being freely and canonically blessed in the same church without any exaction, in reverence for the venerable Egwin—who, after resigning the episcopal see, was*

made abbot in the same monastery—shall use a ring only in the celebration of masses and shall always obtain the first place after the prelate of the Wiccians. From these chapters of the privileges, therefore, the proctor of your monastery endeavored to show that the monastery itself was entirely exempt from every episcopal jurisdiction from its first foundation: first, because it is said to have been constructed by apostolic and royal authority alone, whence it is understood to pertain only to the Apostolic See in spiritual matters and to the royal crown in temporal matters, since the Supreme Pontiff is not accustomed to command that any monastery be constructed by his authority unless it is to be constructed upon ground donated to him; then, because the place itself, which the kings are said to have donated by royal liberality, he also donated, so that, just as they endowed it with liberty as regards temporal matters, so also he should be understood to have endowed it with liberty as regards spiritual matters, since temporal matters pertained to them and spiritual matters to him; also because he especially enjoined the care of the souls of that church upon the Primate of Britain, to whose dominion it is also said to have been especially subjected, so that, if anything sinister should arise there, it might be corrected through his industry and caution, whence he seems to have committed the correction of that place to him alone, and thus to pertain in no way to another; then, because he decreed that the aforesaid place should remain under the monarchy of its own abbot, whence, since monarchy is interpreted as sole principality, it appears that the abbot of that place alone obtains the principal power in that place. That the words of those privileges ought to be understood in this manner the subsequent privileges seem to declare more manifestly; for in the privilege of Innocent of happy memory it is contained that no bishop may presume to celebrate a synod or chapter, ordinations, or public masses in that abbey or its chapels unless invited by the abbot and brothers of that place, and that, when an abbot has been elected in the same monastery, he shall be blessed without any exaction in that church by whatever bishop he prefers, provided that he is catholic and possesses the favor of the Apostolic See. The same Innocent also, adhering to the footsteps of Constantine, decreed that the pastoral care of the whole house and church and of the other places pertaining to that church should remain only with the abbot of that place, and that their ordering should remain in his power alone, just as has hitherto been observed. In the privilege of Pope Alexander it is perceived to be contained that the brothers of that place shall receive chrism, holy oil, consecrations of altars, and ordinations of clerics who are to be promoted to sacred orders from whatever bishop they prefer who possesses the communion and favor of the Apostolic See, with the provision that the Bishops of Worcester shall not unjustly exact anything from them but shall remain content only with those things which it is established their predecessors reasonably rendered to their predecessors. At the end, however, it is added, "that the authority of the Apostolic See be preserved," and it is not said "that the canonical justice of the diocesan bishop be preserved," since, according to the approved custom of the Roman Church, canonical justice is preserved for the diocesan bishop in monasteries which are not exempt. Moreover, in the indulgences of Clement and Celestine of good memory it is plainly intimated that the same monastery pertains to the jurisdiction of blessed Peter with no intermediary, since, after placing this beforehand in the preamble, they infer consequently in this manner: "Induced, therefore, by this reason, we have determined that the use of gloves and ring, dalmatic, tunic, sandals, and mitre is to be granted to you." Therefore, by the fact that the pastoral care of the whole house and church is decreed to remain with the abbot alone, that which had been established by Constantine—namely, that the same place should exist free under the monarchy of its own abbot—is elucidated by Innocent; whence, since the pastoral care of the whole house and church ought to remain with the abbot alone, it is certainly apparent that the bishop ought not to exercise pastoral care there, since the abbot of that place also ought to be blessed within his own church without any exaction. Whence neither profession nor obedience ought to be required from him. But because the abbot cannot exercise by himself certain things pertaining to pastoral solicitude, so that nothing which pertains to the fullness of liberty may be lacking to him, it is granted to him by Alexander that he may freely receive the ecclesiastical sacraments from whatever bishop he prefers who possesses the communion and favor of the Apostolic See. Moreover,

by the fact that the same place is asserted to pertain to the jurisdiction of blessed Peter alone, as is intimated in the indulgences of Clement and Celestine, that which Pope Constantine is said to have done in endowing that place with liberty appears to have been more manifestly declared, when he committed the guardianship of the same to the Primate of Britain as his vicar or legate.] Furthermore, in the privilege of Constantine a certain thing is perceived to be contained through which the same monastery appears to pertain to the jurisdiction of the bishop: namely, that the abbot of that *monastery* should always obtain the first place after the prelate of Worcester. Whence, since he cannot obtain that place in a general or provincial council, because it would be incongruous for an abbot to sit first after him above the other bishops, it therefore remains that he is understood to possess that place in the episcopal synod; for which reason he is bound to attend the episcopal synod and through this to receive and observe its statutes. In the privilege of Pope Alexander another thing is contained through which the diocesan bishop appears to have retained his jurisdiction in that monastery, even if not in all matters, nevertheless in certain matters: since it is said in it that the Bishops of Worcester should not unjustly exact anything from the brothers of that place but should remain content only with those things which it is established their predecessors reasonably rendered to their predecessors. Whence it is established that the abbots are bound to exhibit certain things from their own goods to the bishops. We, therefore, after these and the other things had been diligently heard *and perspicaciously understood*, since prescription was proved by neither party *through witnesses, on the common counsel of our brothers* definitively determine that the monastery of Evesham is free at its head, as wholly exempt from episcopal jurisdiction and subject only to the *Roman Pontiff and* Roman Church, with its guardianship nevertheless reserved to the Archbishop of Canterbury. In its members, however, *namely those* which are not proved exempt, we decree that it is subject to the diocesan bishop; for which reason the abbot ought to attend his synod and obtain the first place after the Bishop of Worcester. For those members also, *as we have said*, which are not exempt, the same abbot is bound to exhibit reverence, service, and honor to the Bishop of Worcester, with which being competently exhibited to him, the Bishop of Worcester ought to remain content. [*Because, however, etc. Given on the fifteenth day before the Kalends of February,* 1206.]

Chapter XVIII

Latin source headnote: One received under the protection of the Pope is not on that account considered exempt. It says this.

The same, to the Bishop of Vic.

It was asked *of us* on your behalf whether clerics and laymen who show letters of protection in which their persons are declared by express name to remain under apostolic protection with all their goods are exempt from the jurisdiction of the diocesan bishop. We, however, respond to you *in this manner* concerning this: that through letters of this kind, *which we sometimes grant personally to certain persons*, they are in no way withdrawn from the power of their bishops. [*Given at Rome, at Saint Peter's, on the Ides of December,* 1204.]

Chapter XIX

Latin source headnote: Religious to whom it has been granted by the Pope that they may convert churches subject to them to their own uses ought to receive possession of those churches not by

their own authority but from the diocesan bishop of the place, unless something else is expressed in the privilege.

The same, to the Bishop of Ely.

The pastoral office (*And below:* [*cf. c.* 28, *On the Office of a Delegated Judge, I.* 29.]) You asked *further* whether religious men to whom it has been granted by the Apostolic See that they may convert their churches to their own uses are permitted, when the persons of those churches die, to enter possession of those *churches* by their own authority, or whether they should rather be inducted into it by the diocesan bishop. To this we *certainly* respond that, unless perhaps this is expressly contained in the indulgence of the Supreme Pontiff, they are not permitted to enter possession of them without consulting their bishop, because we do not believe that episcopal right is derogated from by an indulgence of this kind. [*Solicitously, etc.* (*cf. c.* 9, *On Those Things Which Are Done, III.* 13.) *Given at Rome, at Saint Peter's, on the fourteenth day before the Kalends of January,* 1204.]

Chapter XX

Latin source headnote: If the person because of whose offense an interdict was imposed does not observe it, others are nevertheless bound to observe it; it is otherwise if the person in whose favor it was issued does not observe it.

The same, to the Bishop and Chapter of Tripoli.

You petitioned to be instructed by the Apostolic See whether, when your city is placed under a general interdict because of the Hospitallers or Templars, and those same persons do not observe it, you are bound to observe it. To this we determine that the response is *thus*: that their offense furnishes you no license to offend. But if the aforesaid Hospitallers or Templars exceed the bounds of their privileges by rashly violating an interdict which had been promulgated for them, lest *they* appear to laugh at the weeping of others, during as long as they violate the interdict, by our license you may celebrate as a punishment for their presumption. [*Given at Segni, on the fourteenth day before the Kalends of October, in the fifteenth year of our pontificate,* 1212.]

Chapter XXI

Latin source headnote: A privilege granted to a monastery that its monks cannot be excommunicated is understood concerning monks existing in the monastery or in churches subject to it by both rights. It says this, and it is an everyday case.

The same.

Since, *as you intimated to us through your letters*, it is established by the confession of the opposing party that the Bishop of Nepi receives episcopal right in the church of Saint Blaise de Flagen., *and through this the same church does not pertain to the monastery by full right*, we believe that, notwithstanding that chapter of the privilege which was granted to the *same* monastery—that no bishop may presume to place under interdict churches subject to it by both rights, or to summon to synod or excommunicate a monk or cleric of the same monastery—the aforesaid bishop can place the said church under interdict and excommunicate your monk or cleric appointed to its governance, when either is to be done by law; because that chapter appears to be understood concerning monks or clerics remaining in the monastery itself or sent to churches subject to it by both rights.

Chapter XXII

Latin source headnote: A bishop who remits episcopal tithes to a certain church indefinitely is seen to have remitted not only past but also future tithes. And it is a notable case.

The same, to the Archbishop of London, Legate of the Apostolic See.

Because concerning (*And below:* [*cf. c.* 6, *On Bigamists, I.* 21.]) *Subsequently also* you asked whether the monks of All Saints can extend the privilege granted by your predecessor *E. of good memory* concerning the retention of episcopal tithes to possessions acquired and afterward to be acquired. Concerning this we give *your fraternity* the following response: that, if the remission of those tithes was made according to the canonical sanctions, since your predecessor, in remitting episcopal tithes to the monastery indefinitely, excepted nothing and could have excepted nothing, and the fullest interpretation is to be applied in benefices, nor ought one and the same substance to be assessed under a diverse right, he is seen to have understood it not only concerning the tithes of possessions of that time but of the future. [*Indeed, etc. Moreover, etc.* (*cf. c.* 6, *On Consanguinity and Affinity, IV.* 14.) *Given at Segni, on the fifth day before the Nones of October, in the sixteenth year of our pontificate,* 1213.]

Chapter XXIII

Latin source headnote: The council sets forth the order of the four patriarchal sees, up to the word "preserved," where it sets forth their three privileges. First, that they give the pallium. Second, at the word "Lord's," that they cause the cross to be carried before them, except in the cases excepted here. Third, at the words "In all," that appeal is made to them. And concerning this it makes a reservation at the word "preserved."

The same, in the general council.

Renewing the ancient privileges of the patriarchal sees, with the holy universal synod approving, we decree that after the Roman Church—which by the Lord's disposition obtains the primacy of ordinary power over all others, as the mother and teacher of all the faithful of Christ—the church of Constantinople shall obtain the first place, Alexandria the second, Antioch the third, and Jerusalem the fourth, with its own dignity preserved for each, in such a way that, after their prelates have received from the Roman Pontiff the pallium, which is the insignia of the fullness of pontifical office, and have furnished to him an oath of fidelity and obedience, they too may licitly bestow the pallium upon their suffragans, receiving from them a canonical profession for themselves and a promise of obedience for the Roman Church. They shall, however, cause the standard of the Lord's cross to be carried everywhere before them, except in the city of Rome and wherever the Supreme Pontiff is present, or his legate using the insignia of apostolic dignity. Moreover, in all provinces subject to their jurisdiction, appeal shall be made to them when necessary, with appeals interposed to the Apostolic See preserved, to which deference must humbly be shown by all.

Chapter XXIV

Latin source headnote: A privilege granted to religious that they may bury their confraternity members during an interdict is understood concerning those confraternity members who, although they remain in the world, have nevertheless offered themselves to the order after changing their secular habit, or concerning those who have given their goods to them while retaining the usufruct. This is the first point. A privilege granted to religious by which, when they come to an interdicted

place, churches are opened to them once a year so that divine offices may be celebrated in them is understood to mean that only one single church is opened in the place. This is the second point.

The same, in the same council.

So that the privileges which the Roman Church has granted to certain religious [*persons*] may remain unshaken, we have determined that certain things in them are to be declared, lest, being understood less soundly, they be drawn toward abuse, on account of which they could deservedly be revoked, because one who abuses the power permitted to him deserves to lose his privilege. Indeed, the Apostolic See has granted to certain regulars that ecclesiastical burial shall not be denied to those who have assumed their confraternity, if perhaps the churches to which they pertain have been interdicted from divine offices and it should happen that they die, unless they have been excommunicated or interdicted by name; and that they may carry to their own churches for burial their confraternity members whom the prelates of churches have not permitted to be buried at their churches, unless they have been excommunicated or interdicted by name. We understand this, however, concerning those confraternity members who, while still remaining in the world, have either been offered to their order after changing their secular habit, or who have given their goods to them among the living, retaining for themselves the usufruct for as long as they live in this world; yet let these be buried at non-interdicted churches of those regulars or of others in which they have chosen burial, lest, if it were understood concerning any persons whatever assuming their confraternity, ecclesiastical discipline should alike be dissolved and cheapened for two or three denarii contributed to them annually; nevertheless let them obtain also the certain remission granted to them by the Apostolic See. We also will that the other thing which has been granted to regulars of this kind—namely, that if any of their brothers who have been sent by them to receive confraternities or collections should come to any city, castle, or village, and if perhaps that place has been interdicted from divine offices, in their joyful arrival the churches shall be opened once a year so that, with excommunicated persons excluded, divine offices may be celebrated there—be understood thus: that in the same city, castle, or village only one church is opened to the brothers of that order once in the year, as has been said; because, although it is stated in the plural that churches shall be opened at their joyful arrival, it is nevertheless to be referred by a sound understanding not separately to the churches of the same place but conjointly to the aforesaid places, lest, if they visited the individual churches of the same place in this manner, the sentence of interdict should happen to be excessively cheapened. But those who presume to usurp anything for themselves contrary to the aforesaid declarations shall be subject to grave vengeance.

Chapter XXV

Latin source headnote: During a general interdict bishops who were not prohibited and who were not culpable for the interdict can celebrate secretly; and today this is not a privilege of bishops but the common law, as in the final chapter *On the Sentence of Excommunication* in the Sixth Book, and there it is fully set forth whether, when, and in what manner celebration can occur during an interdict.

The same, in the same council.

Extending to bishops, in favor of the pontifical office, that which has been granted to certain religious, we concede that, when a land has been placed under a common interdict, with excommunicated and interdicted persons excluded, they may sometimes celebrate divine offices

behind closed doors, *and* in a suppressed voice and without bells being rung, unless this very thing has been expressly interdicted to them also. But we grant this to those who have furnished no cause for the interdict and have introduced nothing of deceit or fraud, drawing such a benefit toward an unjust detriment.

Chapter XXVI

Latin source headnote: Privileges are not to be violated even indirectly. It says this generally.

Honorius III, to the Archbishops and Bishops in whose dioceses monasteries and priories subject to the monastery of Cluny are situated.

The more greatly (*And below:*) Indeed, the beloved sons, the Abbot and Convent of Cluny, have offered us a grave complaint that certain of you and your officials, since they cannot pronounce sentences of excommunication and interdict against them and the monks of their order because they are fortified in this matter by privileges of the Apostolic See, pronounce the aforesaid sentences against those who grind in their mills or bake in their ovens, or communicate with them in any way by selling or buying or otherwise; and thus, observing not the force and power but the words alone of the apostolic privileges, they in a certain manner excommunicate the monks of the said order when they do not permit others to communicate with them. From this there also results the incongruity that the monks themselves, as regards this, are judged by the judgment of the Jews, and those who communicate with them in the aforesaid matters incur a greater excommunication than they would have incurred even by communicating with excommunicated persons. Therefore, being unwilling to pass over any longer under dissimulation these things already brought to us by frequent cries, we command all and each of you that henceforth you do not issue sentences of this kind in fraud of our privileges, because, if a cry concerning this should again ascend to us, we shall not be able to pass it by with conniving eyes without chastising the promulgators of such sentences with due severity.

Chapter XXVII

Latin source headnote: Those who conduct themselves as laymen in habit, tonsure, and other respects do not defend themselves as clerics when caught in offenses. It is commonly summarized thus.

The same, to V., formerly the illustrious Queen of the English.

It was proposed on your behalf *before us* that certain literate men, whom neither habit nor tonsure declares to be clerics, dwelling in a land subject to your jurisdiction, when they are caught in certain offenses, in order to elude your jurisdiction and evade the due vengeance for their offenses, assume or even reassume an abandoned tonsure or clerical habit, although before they were regarded as laymen by all, *and thus their offenses remain unpunished*. Therefore, lest malice be fostered by a tonsure or habit thus reassumed, if you exercise your jurisdiction against offenders of this kind who were caught in an offense without tonsure and habit, we have determined that it is to be tolerated with equanimity, since indulgence ought not to be shown to the malice of men, but it should rather be opposed.

Chapter XXVIII

Latin source headnote: Civil law ought not to be taught at Paris and in neighboring places.

The same.

Upon the watchtower (*And below:* [*cf. c.* 5, *On Masters, V.* 5.]) Indeed, although holy Church does not reject the service of secular laws, which imitate *sufficient* traces of equity and justice, nevertheless, because in France and certain provinces laymen do not use the laws of the Roman emperors, and ecclesiastical causes of such a kind that cannot be resolved by canonical statutes rarely occur, so that the sacred page may be attended to more fully, *and the disciples of Elisha may sit more freely beside the fullest streams like doves, when they have not found ladders in the doors upon which they may spread their feet apart*, we firmly interdict and more strictly prohibit anyone from presuming to teach or hear civil law at Paris or in neighboring cities or other places. And one who acts contrary to this shall not only be excluded in the meantime from the advocacy of causes, but shall also be bound by the bishop of the place with the bond of excommunication, *appeal being set aside*. [*But you, brothers and sons, shall observe the aforesaid things more diligently and cause them to be observed more studiously by others, so that you may deservedly be proved true friends of the bridegroom, etc. Given at Viterbo, on the seventh day before the Kalends of December, in the fourth year of our pontificate,* 1219.]

Chapter XXIX

Latin source headnote: Renewal of a privilege does not introduce a new right but preserves the old one.

The same, to the Bishop of Bayeux.

Because it *was not our intention that, through the renewal which we made of a certain writing of the monastery of Saint Stephen of Caen, which we found contained in the register of Pope Alexander of good memory, our predecessor, the right of the church of Bayeux should be derogated from*, since renewal neither confers a new right nor even takes away an old one, we will that you be in that state in which you are known to have existed at the time the renewal was obtained. Moreover, through this we intend to generate no prejudice to any right otherwise belonging to the same monastery.

Chapter XXX

Latin source headnote: Privileged persons who may celebrate everywhere with a portable altar can do this without the license of prelates.

The same.

In those things which are known to pertain to divine worship, not a malign but rather a benign interpretation ought to be made. Whence we are compelled to wonder that, although we determined that it was to be granted to the Friars Preachers and Minors that, wherever they should be, they might celebrate with a portable altar without prejudice to parochial right, certain persons, *as was recently proposed before us*, interpreting our indulgence too strictly, endeavor to assert that through it the aforesaid brothers cannot do this without the assent of *bishops, abbots, and other* prelates; on account of which they do not permit them to celebrate according to the apostolic indulgence. But since, *if the matter stood thus*, the aforesaid indulgence would confer nothing upon them, because without it, with *bishops and other* prelates assenting, this would be permitted to them, we command your fraternity that, after rejecting an interpretation of this kind, provided nevertheless that they wholly abstain *themselves* from the other things which arise by parochial right, you do not defer to publish by our authority the license to celebrate thus given to them, so that the said brothers may

appear to have obtained some favor in this matter from our indulgence. [*Given at Rieti, on the fifth day before the Kalends of September, in the twentieth year,* 1225.]

Chapter XXXI

Latin source headnote: A privilege concerning the nonpayment of tithes of noval lands does not comprehend tithes possessed at the time the privilege was obtained and by others, unless mention is made in the privilege of another's possession.

Gregory IX, to the Dean of the greater church and the Archdeacon of the Christianity of Lincoln.

Formerly, when litigation concerning tithes had arisen between the prior and convent of Butele on the one side and the prioress and nuns of Campesse on the other (*And below:*), on the counsel of our brothers we decree that prejudice ought not to be generated for the right of the aforesaid prior and convent concerning tithes of noval lands of which they were in possession at the time when apostolic indulgences concerning the nonpayment of tithes of noval lands were obtained by the other party, through those indulgences, which make no mention of this.

Chapter XXXII

Latin source headnote: Confraternity members of privileged persons, unless they have transferred themselves to them entirely, are bound to episcopal rights.

The same.

Certain persons, as you assert, received into the confraternity of privileged persons are unwilling to answer you concerning episcopal rights. But for as long as brothers of this kind make their stay in their own houses, you will be able to compel them to pay the said rights to you in full.

Chapter XXXIII

Latin source headnote: As regards the privilege of retaining the tithe, land once noval is always noval.

The same, to the Chapter of Arles.

We respond briefly to your consultation that land concerning which no memory exists that it was ever cultivated, newly reduced to cultivation by religious, ought perpetually to be assessed by law, as regards immunity from paying tithes of noval lands, because otherwise it might sometimes happen that the indulgence concerning noval lands would bring them more detriment than benefit.

Title XXXIV: On Canonical Purgation

Chapter I

Latin source headnote: A defamed person worthy of belief purges himself by oath; otherwise it is the contrary, and one who sins enormously is deemed unsuitable.

From the Council of Tribur.

A noble or freeborn man, if accused in a synod and he denies the crime, if he shall have been known to be trustworthy, shall purge himself with twelve freeborn men. But if previously he was caught in theft, perjury, or false testimony, he shall not be admitted to an oath; rather, purgation shall be imposed upon him as upon one who is not freeborn.

Chapter II

Latin source headnote: A defamed person who, after being admonished three times, does not correct himself is suspended from office until purgation.

From the Council of Agde.

If any priest, negligent of his manner of life, has permitted evil things to be suspected of him through depraved examples, and the people, bound by the bishop through an oath or ban of the Christianity, have disclosed his infamy, and certain accusers of his crime have been lacking, he shall first be admonished separately by the bishop, then before two or three witnesses; and, if he has not amended himself, [*in the assembly of priests*] the bishop shall admonish him by public rebuke. But if not even thus has he corrected himself, he shall be suspended from office until fitting satisfaction, lest the faithful people suffer scandal in him.

Chapter III

Latin source headnote: Regulars also purge themselves of an offense according to the canonical rule.

From the Council of Meaux.

If nuns are accused of serving lusts and cannot be manifestly detected, they shall be compelled canonically to purge their evil reputation in accordance with the rule of their standing.

Chapter IV

Latin source headnote: If the offense is probable, purgation is not imposed; otherwise it is. It says this as regards the title.

From the same council.

If anyone of ecclesiastical rank has manifestly disclosed himself as an assenter to or intermediary for abductors of the betrothed women of others, he shall be repelled from his own rank; and, if he has been assailed by probable suspicions arising from this, he shall canonically purge himself.

Chapter V

Latin source headnote: A defamed person against whom a crime cannot be proved ought to purge himself by an oath concerning the truth, but the compurgators concerning belief.

Pope Innocent, to the Patriarch of Aquileia and the Bishop of Mantua.

We do not believe it escapes you how many times *our brother A.*, Bishop of Trent, has been accused of simony *in our presence and yours*; but the accusers, bringing a writing, were unable to produce witnesses according to canonical form—namely, that he had given the church of Saint Peter to the priest P. for four measures of grain, *which he had received from that church. But because neither the accusers nor the*

witnesses were able to proceed in that cause according to the form of the canons and the statutes of the holy Fathers, on the common counsel of our brothers we judge that he ought to purge himself of the aforesaid simony with three members of his own order and four abbots and religious priests as oath-helpers, *in your presence*. The tenor of the purgation shall, moreover, be of this kind: the *same* bishop shall first swear upon the holy Gospels of God that, for the church of Saint Peter to be given to the priest P., neither he himself, by himself or through an intermediary person, nor anyone for him with his knowledge received a price; then [*however*] the compurgators shall swear upon the holy Gospels of God that they believe he swore truly. [*We therefore, etc.* (*cf. c.* 17, *C. II, qu.* 5.)]

Chapter VI

Latin source headnote: A bishop compels his defamed parishioner to purge himself before him, unless he has legitimately appealed from him.

Alexander III, to the Bishop of Genoa.

We *preside among others with supreme dignity, although undeserving, so that we ought to declare things which are doubtful and diligently respond to the consultations of individuals insofar as the Lord has ministered to us, so that questions may be terminated under the examination of the Roman Church, which by the Lord's disposition obtains the primacy among the other churches. Whence*, because your fraternity wished to consult us as to whether a bishop can compel his parishioner, *when public report accuses him*, to purgation, we respond to your consultation in this manner: that, if he labors under public infamy concerning any crime, when an accuser and witnesses are lacking, he is to be compelled to purgation by the bishop himself, unless perhaps he has determined to appeal concerning this to a superior judge. Indeed, if he has appealed, he shall obey the judgment of him to whose examination he has willed to transfer the cause through appeal.

Chapter VII

Latin source headnote: Compurgators ought to be honorable and to have knowledge of the person whom they purge, and they ought not to be impeded by the judge or another; and one who fails in purgation is punished as convicted.

The same, to the Bishop-elect of Gaeta.

When P. Manconella, priest (*And below:* [*cf. c.* 10, *On Accusations, V.* 1.]) We will, *however*, that his purgators be of such honor and reputation that it is probable that they would be unwilling to swear falsely through love, hatred, or consideration of money. But so that they may appear suitable, it is necessary that they know the life and manner of living of the person whom they ought to purge. You shall take care to deprive one who fails in purgation of every ecclesiastical office and benefice, *taking care by every means* that, if any should wish to assist a person purging himself in his purgation, you show them no malevolence or indignation, nor impede them *in any manner*, or permit them, so far as lies in you, to be impeded by others.

Chapter VIII

Latin source headnote: An absolution made according to vulgar purgation does not hold, and notwithstanding it purgation can be imposed anew and an accusation is admitted.

Lucius III.

From the contents of your letters we have understood that, when you had suspended the priest H., *the bearer of the present letters*, from the priestly office because he was defamed concerning homicide, *after the counsel of the brothers in your episcopate had been consulted*, he produced letters of your predecessor *of good memory*, from which it appeared that he had purged his innocence by the judgment of cold water and that the bishop had absolved him by his letters; *a scholar also, who at the instigation of the devil had perpetrated the homicide, affirmed, after touching the holy Gospels, that he himself was immune from the crime*. But because foreign judgments are prohibited, we, judging that the purgation which he furnished was not sufficient, command your fraternity *by apostolic writings* that, if suitable accusers have not appeared *who can convict him of the homicide*, you enjoin upon him that he show his innocence through canonical purgation with seven or five members of his own order as oath-helpers, as you shall know to be expedient; and when he has furnished it, you shall relax the suspension without *delay and* difficulty and, announcing him to be a man of good testimony, absolve him from the infamy of homicide, no contradiction or appeal notwithstanding, *supported by our authority*. *The one who is defamed, however, shall affirm by a furnished oath that he is immune from the crime of homicide, and the purgators ought to swear that they believe he swore truly.*

Chapter IX

Latin source headnote: It suffices that a compurgator be tolerated by the Church, be of good reputation, and not be condemned as suspected of a crime.

The same, to the Bishop of Winchester.

Established in our presence, P. the deacon *of Bochan showed us by his assertion* (*And below:*) Furthermore, this induces no small wonder in us: that you were unwilling to receive the offered purgation unless you first commended the names of the individual persons who wished to purge the *said* P. and first diligently inquired concerning their nations and the other circumstances, as though you were going to make ordinations—would that you discussed ordinands in this way! Indeed, in purgations to be made, since it is sufficient for those who furnish an oath for the person to be purged to swear according to their own conscience and opinion that the person to be purged is immune from the crime or that he furnished a good oath, if the purgators are tolerated by the Church, are of good reputation while ministering in their orders, and have not been condemned in judgment for a crime, they are without doubt to be admitted without any investigation.

Chapter X

Latin source headnote: On account of the magnitude of the crime, a defamed person can be suspended not only from office but also from benefice until he has purged himself. This is the first point. And on this account the number of compurgators is increased. This is the second point. For a cause, someone is sometimes suspended for a time after purgation has been furnished. This is the third point. And one who fails in purgation is punished as convicted. This is the fourth point.

Innocent III, to the Archbishop of Sens.

Among our solicitudes this ought to be the chief: that we catch the little foxes *which endeavor to demolish the vineyard of the Lord, having certain diverse appearances but tails joined to one another, because in vanity they agree in the same thing. For these are the taverners who mix water with wine, who serve the poison of the dragon in the golden cup of Babylon, who, according to the prophetic

word, bend the bow, a bitter thing, so that they may shoot the innocent in secret; their error creeps like a cancer in such a way that, unless the cluster is injured in the flower, it will germinate fruit not only bitter but even pestiferous. The Apostle, an eminent preacher, describes these in his epistle with prophetic speech and teaches that they are to be avoided in every way; against them priests ought to sound with silver trumpets so that, with the people crying out and the ark of the covenant preceding, the walls of Jericho—which had already been condemned by perpetual anathema—may fall, in such a way that, if anyone should presume to steal from it even a golden rule, he shall be overwhelmed with stones with Achor, the son of Charmi. *[*You, therefore, as a provident and discreet man, fulfill the office of a true pastor and exercise pastoral solicitude purely and fully over the flock committed to you, while you both are zealous for the law of Christ and, attacking the error of heretics, unsheathe the sword of canonical vengeance against their supporters. For vigilantly you keep watch over your flock, lest, after abandoning the fold of the true shepherd, which is one, the sheep rashly depart after the tracks of flocks which are not of it, or lest the wolf seize and scatter those whom truth has united in the same fold under one shepherd of the catholic faith. Appointed among the chief cultivators of the vineyard of the Lord of Sabaoth, you do not suffer the little foxes which we have described to demolish its appearance, but endeavor rather to catch or drive them away. Indeed, as we have learned from the letters of your fraternity, when at the prayers of our venerable brother the Bishop of Auxerre you had gone to the town which is called La Charité, with him and our venerable brothers the Bishops of Nevers and Meaux present, you caused the people of that town to be assembled together, where, after a diligent inquiry had been held concerning heretics and their doctrines, among others whom you found publicly defamed concerning heretical depravity, you learned that the Dean of Nevers was burdened by common opinion and that through him and in him no small scandal had been manifested in the minds of Catholics. Whence, on account of the vehement infamy and grave scandal, you suspended him from office and benefice, assigning him a certain day at Auxerre on which he should present himself before you to defend himself from the crime charged. And when he had come to your presence at the appointed term, with the said Bishops of Auxerre and Nevers and many persons learned in both laws present, since no certain accuser appeared against him, by virtue of your office you caused witnesses both for him and against him to be received and diligently examined and the attestations also to be published. And when afterward he did not present himself before you on the day granted to him, although you had granted him free opportunity to speak against the witnesses and their statements and to propose his arguments, after certain proofs and allegations had been proposed and he had finally renounced them, he sought a sentence. But you, withdrawing together with our venerable brothers the Bishop of Troyes and the said Bishops of Auxerre and Nevers, after the attestations had been diligently inspected and the counsel of many wise men employed, because the crime against him had not been clearly proved, did not determine that he was to be condemned for heresy. But because from the statements of the witnesses there was much presumption against him, inasmuch as it had been manifestly proved that he had not only had familiarity with heretics but had even knowingly sought it, and since he also labored under public infamy and so great a scandal had been stirred up against him that it could not be erased by canonical purgation, you were unwilling either to absolve him or to receive the purgation which he had offered at the beginning and was then also offering, but determined that he was to be sent to the Apostolic See with your letters, understanding that from the fullness of power granted to us we can dispense short of canonical punishment and increase the rigor of severity beyond it. Moreover, when he had afterward been established in our presence, we granted him a common audience in our consistory, where he endeavored to excuse himself in many ways, alleging especially that, since he offered purgation when no legitimate accuser appeared, witnesses against him ought not to have been admitted in any way.*] Therefore, although an ecclesiastical constitution teaches that such persons are to be suspended only from office until canonical purgation, nevertheless, because you suspended him also from benefice on

account of the enormity of the crime, we are unwilling to disapprove it; nor do we disapprove even this: that, although no legitimate accuser appeared against him, nevertheless by virtue of your office, with public report making the accusation, you wished to inquire more fully into the truth. Attending, however, to the widespread infamy, grave scandal, and vehement suspicion arising from the statements of the witnesses, which appeared to make against the *same* dean, since purgation would have to be imposed upon him on account of any one of them, and preserving justice while softening rigor, *on the counsel of our brothers, the archbishops* [*and*] *bishops existing at the Apostolic See,* we have determined that a purgation of the fourteenth hand of his order is to be imposed upon him. Therefore, remitting him to you *with apostolic letters* so that he may be purged where he is known to be defamed, we command your fraternity *by apostolic writings* that, having summoned with you the *said* Bishop of Nevers and *our venerable brother* the Bishop of Paris, you receive the purgation imposed upon him *by us,* yet in such a way that those who proceed to prove his purgation are Catholics in faith and approved in life, who have known his manner of life and life not so much in modern time as in the past; but, when the purgation has been received, do not postpone restoring his benefice to him, *lest he be compelled to beg, to the reproach of the clergy*. As a punishment, however, for that familiarity which he is known knowingly to have had with heretics, we will that he remain suspended from office until the scandal is quieted, yet in such a way that he publicly abjure familiarity with heretics. You shall moreover strictly command him that in the aforesaid and other surrounding towns he profess and preach the catholic faith, and confound and detest heretical depravity, henceforth adorning his life with good works in such a way that the infamy may be converted into good reputation and every scandal and suspicion may be erased from the minds of Catholics. But if perhaps he should fail in the purgation, you shall strike him with the sword of ecclesiastical discipline and shall not omit to thrust him, deposed from office and benefice, into a strict monastery to perform penance. [*Given at the Lateran, on the Nones of May,* 1199.]

Chapter XI

Latin source headnote: It is brief and cannot be summarized otherwise.

The same, to the Abbot of Saint-Denis and the Priest of Saint Martin.

When the beloved (*And below:*) We will and command you, however, to attend to this: that such persons as are neighboring and honorable be admitted to *this kind of* purgation. [*But if not all, etc. Given at the Lateran, on the ninth day before the Kalends of April,* 1202.]

Chapter XII

Latin source headnote: If infamy does not take its origin from probable conjectures, purgation is not to be imposed of necessity; nevertheless, it can be imposed at the insistence of the person to be purged.

The same.

When in his youth (*And below:* [*cf. c.* 15, *On Presumptions, II.* 23.]) But because a father chastises the son whom he loves, for greater caution we enjoined upon the Bishop of Pécs through our letters that, by ceasing from his familiarity, he should conduct himself *before God and men* in such a way that sinister suspicion concerning him could not be held. But the enemy man, surreptitiously obtaining a rescript of *those* letters, wickedly published it before the *aforesaid* king and magnates of the kingdom

so that the *same bishop* should thereby be defamed more greatly, *since he appeared to be unbelievable and suspect to us*. Whence we, attending to so great a wickedness of his rivals, although we were pressed many times against him, nevertheless could never be moved against him, knowing that a multitude easily follows the statement of one person. But when the same bishop had been postulated to the metropolitan see of Esztergom, certain persons who opposed that postulation, so that they might more easily impede his promotion, endeavored to rekindle the coals of that accusation. Whence a certain proctor of his, *established in our presence*, on the counsel of *certain* of his friends who *indeed* had a good zeal concerning this, but not according to knowledge, began *before us in the presence of our brothers* insistently to petition that we cause canonical purgation to be imposed upon the same bishop so that he might demonstrate his innocence. We, however, regarding a petition of this kind as insufficiently provident, *indeed, as exceedingly improvident*, often wished to recall the proctor himself from it, *both because the often-mentioned bishop did not appear among good and serious men to be defamed concerning that crime, since his fellow bishops, questioned concerning this by apostolic command, took care to furnish us laudable testimony concerning him, and because such defamation appeared to have proceeded from enemies and rivals, as was expressed above. Whence, since his previous life appeared commendable and a deed of this kind appeared incredible, we did not believe that any purgation was henceforth to be imposed upon him.* Moreover, because the proctor insisted, we were compelled, not by necessity of law but by the importunity of the petitioner, to command that purgation be imposed upon him by you with two [*bishops and three*] abbots, although we had protested to the *same proctor* that such a petition was then being made insufficiently providently for another *also* reason: namely, because the suffragans of the church of Esztergom would scarcely at that time purge that man, since they contradicted him in the matter of the postulation, and the suffragans of the church of Kalocsa would then by no means purge him, because a controversy concerning the metropolitan see of Esztergom was being disputed between him and the Archbishop of Kalocsa. Whence, since there are no other pontiffs in Hungary, it deservedly appeared that he could not purge himself in that article through the bishops of his kingdom. [*Therefore, etc. Given at Ferentino, on the Nones of July, in the ninth year,* 1206.]

Chapter XIII

Latin source headnote: A compurgator swears concerning belief.

The same, to the Archbishop of Tyre.

Concerning witnesses (*And below:* [*cf. c.* 29, *On Witnesses, II.* 20.]) But those who are introduced to purge the infamy of someone are bound to affirm by oath this alone: that they believe that the person who is purged speaks the truth *by oath*. [*Given at the Lateran, on the fourth day before the Nones of January,* 1199.]

Chapter XIV

Latin source headnote: A person defamed concerning a defect of birth ought not to be promoted unless he first purges himself.

The same, to the Bishop of Florence.

Coming to our presence, the *beloved son* T., deacon, *your parishioner*, showed us by a humble intimation that, when it was said by his rivals that he was the son of a priest, you neither wished to promote him *to the order of the presbyterate* nor permitted him to be promoted by another, *although neither this nor*

anything else had been proved against him. Therefore, we command your fraternity *by apostolic writings* that, if the *deacon himself* was publicly besprinkled with a mark *of this kind* and it cannot be legitimately established to you concerning it, after purgation has been received from him, *provided that no other canonical impediment obstructs*, you do not defer on this account to promote him to the office of priest, because, although it is not a mark of offense, it is nevertheless a mark of defect impeding promotion to sacred orders. [*Given at Rome, at Saint Peter's, on the eighth day before the Ides of February, in the ninth year,* 1207.]

Chapter XV

Latin source headnote: Purgation is not to be imposed concerning a notorious crime; and, while a case concerning crimes is pending before a delegate of the Pope, a purgation received concerning them by the ordinary is not valid.

The same, to the Abbot of Eugen. and the Scholastic of Modena.

When, for the beloved sons H. the priest and G., proctor of the cleric O., *who had been constituted in our presence, we granted our beloved son* T., *our subdeacon and* chaplain, as auditor, the same proctor proposed *before him* that, when the said priest had been publicly defamed concerning the crime of incest, the Bishop of Constance *of good memory*, the ordinary judge, imposed purgation upon him; and, when he had been unable to purge himself, he was by sentence deprived by him *in a full synod* of his churches, which he nevertheless held *for some time*, occupied by violence. And when *afterwards* the same priest publicly kept in his house *after bringing her there* the wife of one of his blood relatives, at the petition *of H.*, the parish priest of Heniso, and of certain other clerics of the diocese of Constance, we say that we sent *our* letters to judges *in this form*: *namely*, that, if the said priest could not purge himself before them concerning the crime of adultery and incest, they should chastise him with the due penalty. They, *proceeding in the business according to the tenor of our mandate*, when it was established to them that the same priest, because he had failed in the purgation, had been condemned *in synod* by the aforesaid bishop, deprived him by sentence, as contumacious, of the aforesaid churches, especially since the crime of incest and adultery, as notorious, *was manifestly evident* to them; and they granted to the *beloved son*, the Abbot of Saint Gall, to whom the donation of those churches pertained, free power to confer those churches upon other persons, and he afterwards assigned them to the above-mentioned cleric O. [*But the same priest, coming to the Apostolic See and falsely asserting that he had been despoiled with the order of law disregarded, carried back our letters to the abbot of the house of Saint Peter and his fellow judges, who were altogether suspect to the other party. After a copy of those letters had been denied to the same O., and after they had refused to admit his proof concerning the falsity of the letters, they, with the order of law disregarded and after an appeal had lawfully been interposed to us, delivered a sentence of restitution for the same priest, which O. proposed that he would prove at the proper place and time through lawful witnesses.*] The said priest, however, among other things, responded *on the opposing side* that [*although he had been defamed concerning the foregoing crimes by hostile enemies, and purgation had on that account been imposed upon him by the chapter of Constance, nevertheless no one wished to receive it, although he had been prepared to furnish it within the term fixed for him; adding that*] the proceeding of the aforesaid judges deserved to be retracted because, when joinder of issue had not occurred, *and after an appeal had been interposed to us*, they had presumed to proceed against him. [*Moreover, the said priest proposed by way of complaint that, when he had been despoiled of the aforesaid churches by violence by the aforesaid O. and his accomplices, and, after letters of restitution had been obtained first to the above-mentioned abbot of the house of Saint Peter and his fellow judges, and secondly to the*

bishop-elect of Constance, he had deserved to obtain the benefit of restitution through both, the same O. did not fear to despoil him repeatedly. Hence, when on this account he and his accomplices, bound by a sentence of excommunication, persisted in their contumacy, we gave orders to the aforesaid bishop-elect and his fellow judges that, supported by our authority, they should more strictly prohibit divine offices from being said in places in which the same excommunicated persons were present, and, with appeal ceasing, should suspend them from divine things until they competently satisfied the often-mentioned priest for the damages and injuries inflicted, or presented themselves before us to answer for so great a contempt. But they, fleeing to the refuge of an appeal, although under interdict, celebrate divine rites contrary to the prohibition of those judges, and they did not take care to send a representative to our presence.] He added that, *to abolish every infamy*, he had taken care to furnish the purgation imposed by the bishop-elect of Constance; *yet the often-mentioned rivals do not cease to defame him. Hence he humbly supplicated us that, absolved from their claims, we should cause him to enjoy peaceful possession of the aforesaid churches,* [*lawfully punishing those who, excommunicated and under interdict, presumed to celebrate divine offices. To these things the proctor added that the said purgation was received by the bishop-elect while the other party was absent and wholly ignorant, which he also asserted that he would prove.*]

Therefore, these and the other things *that were proposed before the aforesaid chaplain* having been more fully understood, although those letters said to have been obtained to the aforesaid judges, or a transcript of them, had not been shown before us, nevertheless, because from the tenor of their report, which the said proctor exhibited, it was clearly established to us—as if the letters themselves had been shown—that those judges had proceeded with the order of law disregarded, by apostolic authority we retract both their proceeding and the grant of the churches made by the aforesaid abbot at their mandate, especially since the sequence of the report itself contains contradictory and opposing things. For it is said that the crime of the same priest had been public and notorious to such a degree that no place at all remained for denial, seeing that the people of the entire neighborhood were witnesses to it; and yet it is stated there beforehand that they fixed for the same priest a peremptory term in which, if he could, he might canonically purge himself concerning the infamy of the aforesaid crimes; for, assuredly, if the crime was notorious, purgation was *certainly* not to be imposed upon him, but a sentence of condemnation was to be promulgated against him. [*We have also thought that the sentence of restitution delivered for the same priest by different judges ought to be approved, commanding you by the authority of the present letters that you introduce the same priest into corporal possession of the aforesaid churches, with the obstacle of any contradiction and appeal removed, and defend him after he has been introduced; constraining objectors, if there are any, by ecclesiastical censure with appeal postponed, and causing competent satisfaction to be made to the same priest both concerning the fruits received in the meantime from the aforesaid churches and concerning the damages and injuries inflicted. Full restitution having been made, if a lawful opponent appears who can and wishes lawfully to prove that the same priest, because he failed in a purgation lawfully imposed upon him, was condemned by the aforesaid bishop and despoiled of the often-mentioned churches, you shall impose perpetual silence upon him concerning those churches, causing them to be canonically provided with suitable persons by those to whom it pertains.*] But if no lawful accuser appears, and you find him defamed among good and grave men concerning the aforesaid crimes, or either one of them, you shall impose canonical purgation upon him, notwithstanding that he is said to have purged himself before the aforesaid bishop-elect; for, while the judicial proceeding was pending before delegated judges, the ordinary ought not to have imposed purgation upon the defamed man. [*In which purgation, etc. Given at Rome, at Saint Peter's, on the fourth day before the Ides of January, in the tenth year,* 1208.]

Chapter XVI

Latin source headnote: It is not sufficient for a prelate defamed concerning crimes, when he purges himself, to swear that he is free from those crimes; rather, he ought to swear that he did not commit those crimes after his promotion.

The same.

We received the letters by which you took care to intimate to us that, after the apostolic mandate concerning the imposition of purgation upon our *venerable brother*, the Archbishop of Besançon, had been received, you cited him as was proper; and he appeared before you on the appointed day, offering an oath of purgation in this form, namely, that he was free from those crimes concerning which he was bound to purge himself. [*And when you said that this was not the canonical form, and there had been some dispute concerning this, he at last raised the voice of appeal to us, to which you deferred on the advice of prudent men.*] But he, coming to our presence, humbly supplicated that at least concerning the purgation of incontinence we deign to temper rigor, because he ought not to assert that from his birth he had never suffered a lapse of the flesh. Furthermore, since it is not believed that an oath of this kind was required of him, we perhaps presume rather that for another reason he wished to swear according to the prescribed form, namely, that he was free from those crimes concerning which he had been defamed, as though, since they had been remitted through penance, he was now free from them. But to swear this would be an act of no small temerity, since blessed Job says: "Even if I shall have been innocent, my soul itself is ignorant of this," [*and Solomon: "Who can say: My heart is clean and I am pure from sin?" Hence the Psalmist said: "Who understands offenses? Cleanse me from my hidden ones, O Lord," while the Apostle bears witness: "I am conscious of nothing in myself, yet I am not thereby justified."*] Therefore we reject the prescribed form of purgation, according to which the same archbishop offered to purge himself, as undiscerning, rash, and inept, enjoining upon him that, if he wishes and is able to purge himself according to the following form, he shall do so according to the sound understanding that we have thought ought to be expressed to him: namely, that he swear that he did not at all commit, after he was promoted to archiepiscopal dignity, those graver crimes—that is, simony, the sale of justice, and incontinence—concerning which he stands defamed; and let the compurgators swear in this manner, that they believe that he has sworn the truth. When this has been done, you shall dismiss him in peace. Otherwise, etc. [*Given at the Lateran, on the fourth day before the Nones of January, in the sixteenth year of our pontificate,* 1214.]

Title XXXV: On Vulgar Purgation

Chapter I

Latin source headnote: Duels and other vulgar purgations are prohibited, because through them one who ought to be absolved is often condemned, and God appears to be tempted. This is what the whole title says.

Celestine III.

The care of the government undertaken *induces us that we ought to respond to the consultations of our brothers and, so far as human frailty permits, to cut away from them the scruple of doubt. Hence it is that*, since your fraternity has thought that the Apostolic See should be consulted as to whether duels ought to be sustained concerning possession of churches, we have thought it right to respond to your

solicitude that in that case, or in any others, you ought in no way to tolerate this. [*Given at Rome, at Saint Peter's.*]

Chapter II

Latin source headnote: It is summarized above, in the preceding chapter.

Innocent III, to the Prior of Saint Sergius of Spoleto.

You should know that it has come to our hearing through the representations of the layman V. and his brothers that, when a certain man accused them concerning the crime of theft, they were compelled, *contrary to the custom of the land*, to enter a duel with him; in it they fell, their other sins impeding them, on account of which, *after an appeal had been interposed to us*, they were despoiled of their own goods by the consuls of Spoleto. But now the theft has been found among others, and, by the Lord's agency, it has been revealed that they were innocent. Hence we gave orders to the consuls themselves that they restore all things taken away [*from them*]. *Therefore we command your discretion by apostolic writings that, if they neglect to fulfill our mandate, you, having summoned the parties and heard what is proposed on both sides, are to decree, with appeal removed, what shall be just, causing what you decree to be firmly observed through ecclesiastical censure, etc.* [*Given at the Lateran, on the eleventh day before the Kalends of April,* 1203.]

Chapter III

Latin source headnote: It is summarized above, Chapter I.

Honorius III.

Beloved sons newly baptized in Livonia sent a grave complaint to us that the brothers of the Templars *professing the order in Livonia*, and certain *other advocates and judges* who exercise temporal power over them, whenever they are defamed concerning some crime, compel them to undergo the judgment of glowing iron; and if any burning follows from it, they inflict a civil penalty upon them, *by which matter they strike scandal and terror into converts and those to be converted*. Therefore, since a judgment of this kind is altogether forbidden *according to lawful and canonical sanctions*, as one in which God appears to be tempted, we command that, *after admonition has been given*, you compel by ecclesiastical censure, with appeal removed, the said brothers and others to desist altogether from a grievance of this kind against the converts.

Title XXXVI: On Injuries and Damage Inflicted

Chapter I

Latin source headnote: Because of its brevity, it is not summarized.

In Exodus.

If men shall have quarreled, and one strikes his neighbor with a stone or fist, and he shall not have died but shall have lain in bed, *if he shall have arisen and walked outside upon his staff, the one who struck him shall be innocent*, yet *in such manner that* he restore his lost labor and expenses for physicians.

Chapter II

Latin source headnote: It is brief, and therefore is not summarized.

In the same place.

If anyone opens a cistern and digs it, and does not cover it, and an ox or ass falls into it, the owner of the cistern shall render the price of the beasts; but that which is dead shall be his.

Chapter III

Latin source headnote: It is brief, and therefore is not summarized.

In the same place.

If another's ox *wounds the ox of another, and it dies, they shall sell the living ox and divide the price; but they shall divide between themselves the carcass of the dead one. But if he knew that the ox* had been apt to gore since yesterday and the day before, and its owner did not keep it, he shall render ox for ox and shall receive the whole carcass.

Chapter IV

In the same place.

If anyone damages a field or vineyard and lets loose his beast so that it feeds upon another's property, he shall restore as the valuation for the damage *whatever best thing he has in his own field or vineyard*.

Chapter V

Latin source headnote: It is brief and is not summarized.

In the same place.

If fire going out *finds thorns and* seizes stacks of grain or standing crops in the fields, the one who kindled the fire shall render the damage.

Chapter VI

Latin source headnote: It is brief and almost the same as the preceding chapter.

From the Roman Penitential.

If anyone voluntarily burns someone's house or threshing floor, he shall restore everything removed and burned and shall do penance for three years.

Chapter VII

Latin source headnote: A secular power that has placed a cleric under ban ought to be condemned by an ecclesiastical judge according to the valuation of the injury, expenses, and damages. And today add the penalty in Clementines 1, On Penalties.

Honorius III, to the Bishop of Bologna.

Formerly, when we wrote to our *venerable brother*, the Bishop of Modena, that, *coming personally to Florence*, he should *effectively admonish and induce* the government, councilors, and people of the city of Florence to make satisfaction for the damages and injuries inflicted upon our *venerable brother*, the

Bishop of Fiesole, and the churches of Fiesole, *and, if it should be necessary*, should constrain them by ecclesiastical censure, the same *Bishop of Modena, more diligently executing our mandate as to the admonition and having granted a period of delay*, received witnesses before joinder of issue. Therefore we, having entirely revoked his proceeding *because he had proceeded to the reception of witnesses before joinder of issue*, have thought that the commune of Florence, because it had placed *the same* Bishop of Fiesole under ban contrary to God and ecclesiastical liberty, should by sentence be condemned, on account of the injury of the ban and the expenses and damages ensuing on such an occasion, after valuation had first been made by oath, to pay one thousand pounds of current money to the aforesaid *Bishop of Fiesole*.

Chapter VIII

Latin source headnote: One who swears to a statute concerning damages not to be reclaimed will, notwithstanding this, be able to reclaim expenses. This is what it says; or thus: A statute concerning damages not to be reclaimed does not extend to expenses.

Gregory IX.

You proposed in our presence and that of our brothers that formerly the citizens of Brescia, being very greatly burdened by restorations of damages inflicted upon one another, which they had incurred on account of many civil discords, generally approved and even confirmed by oath a statute issued [*by our venerable brother the Patriarch of Antioch, then Bishop-elect of Brescia*], [*namely*] that restorations of this kind were not thereafter to be sought or received from the commune. [*But recently, not without our labor and solicitude, you procured that, concerning the discord that gravely troubles those citizens, the consuls and council swore precisely and absolutely that they would obey all your mandates; yet, unless it should happen that provision is made by the commune of Brescia for those suffering damages at least in the expenses that they made on an occasion of this kind, you cannot perfectly quiet that discord without its undergoing a relapse. Concerning this you sought that an apostolic* (*remedy*) *be applied.*] Therefore, since restoration of damages is one thing and satisfaction of expenses another, and hence it ought not to be understood that the matter of expenses was comprehended in the oath furnished concerning the article of damages, we command [*your fraternity by apostolic writings*] that, notwithstanding the aforesaid oath, by our authority you provide that, for the good of concord, the said commune contribute something toward satisfaction of the expenses according to the judgment of your discretion, to be moderated by you as shall be expedient. [*Given at the Lateran, on the fifteenth day before the Kalends of April, in the fourth year of our pontificate,* 1230.]

Chapter IX

Latin source headnote: It contains several statements and summarizes itself.

The same.

If through your fault damage was caused or an injury inflicted, or perhaps you gave aid to others inflicting them, or these things occurred through your lack of skill or negligence, by law you ought to make satisfaction for them; nor does ignorance excuse you if you ought to have known that injury or loss could probably result from your act. But if you allege that your animals did harm, you are nevertheless bound to satisfaction unless, by giving them to those who suffered the damage, you wish to free yourself; this, however, does not avail for liberation if they were wild animals, or ones accustomed to do harm, and you did not take the diligence that you ought to have taken. Indeed, although one who gives the occasion of damage is seen to have caused the damage, nevertheless it

must be said otherwise of one who omitted nothing among the contingencies so that it would not happen.

Title XXXVII: On Penalties

Chapter I

Latin source headnote: A criminal is to be punished as often as he repeats the offense.

From the Council of Toledo.

Things that are repeated by frequent transgression are to be condemned by frequent sentence.

Chapter II

Latin source headnote: One who kills a priest is to be punished, and part of the penalty is distributed to the church over which he presided, and the other part for his soul.

From the Council of Tribur.

The composition for a slain priest is to be paid to the bishop to whose diocese he belongs, in such manner *namely* that the bishop shall assign half *of his wergild* to the uses of the church over which he presided, *and* shall justly distribute the other *half* in alms for him, because no one seems to *us* a nearer heir of his than *the one* who joined him to the Lord.

Chapter III

Latin source headnote: Prelates ought not to exact money for tolerating criminals, nor, even for the sake of correction, to impose a monetary penalty from cupidity.

Alexander III, to the Archbishop of Canterbury.

Although, according to the Apostle, *we ought to reprove, entreat, and rebuke, nevertheless we ought so to correct the excesses of individuals that we are proved to seek not the things that are ours but those that are Jesus Christ's, and that we are seen to preserve moderation and maturity in making correction*. We have *however* received that the archdeacons of the bishopric of Coventry, for correcting excesses and punishing crimes, exact a monetary penalty from clerics and laymen, *and in the ordeal of fire and water presume to demand thirty denarii from a man and a woman*; and for an annual exaction of money they sometimes suspend persons [*and*] place churches under interdict; they do not fear *also* to exact twelve denarii from vicars so that they may permit them to sing in churches; and they do other things that oppose the institutes of the canons and appear to proceed from the root of cupidity and avarice. *Therefore, because it is incumbent upon our solicitude to provide with pastoral diligence that nothing be done by the ecclesiastical persons of your province that is subject to reproach or blackens ecclesiastical honor, by apostolic writings we command your fraternity, by way of precept,* that you more strictly prohibit this to the archdeacons of the aforesaid bishopric *on our part and yours*; but if they presume with *rash boldness to act contrary to your prohibition*, you shall compel them by ecclesiastical censure, *with every occasion and* appeal ceasing, *and cause that sentence to be inviolably observed until worthy satisfaction*.

Chapter IV

Latin source headnote: The defeated party is condemned in expenses to the victorious party who is present, even in pecuniary cases; and it excepts one case.

The same, in the Council of Tours.

By condemning in expenses, and by another manifold remedy, the imperial enactment restrains the calumny and audacity of those litigating rashly. Therefore, since it is recognized as consonant with the sacred institutes, we command that henceforth in pecuniary cases the defeated party be condemned in expenses to the victorious party, unless *perhaps, as has been provided*, sentence is rendered for one absent.

Chapter V

Latin source headnote: A cleric who furnishes cause or assistance for war is to be deposed.

Innocent III, to the Archbishop of Nidaros.

In matters of doubt (*And below:* [*cf. c.* 30, *On the Sentence of Excommunication, V.* 39.]) But because priests who steer ships into battle, those who personally engage in the conflict *of battle*, and those who incite others to fight, all *indeed* sin enormously, we believe that according to canonical rigor they are to be deposed. [*These moreover, etc.* (*cf. c.* 8, *On Renunciation, I.* 9.) *Given at the city of Castella, on the sixth day before the Ides of October,* 1198.]

Chapter VI

Latin source headnote: A cleric is to be deposed for a great crime committed by him and thrust into a monastery to do penance.

The same, to the Bishop of London.

The prudence of your discretion (*And below:*) To that *moreover* which you asked of us in the third place —how clerics detected in robbery or other great crimes ought to be punished—we respond that, degraded from their orders, they ought to be thrust into strict monasteries to perform penance. [*But, etc. Given at the Lateran, on the sixth day before the Ides of November, in the fifth year of our pontificate,* 1202.]

Chapter VII

Latin source headnote: If each of the contracting parties acts contrary to the contract, each can exact the penalty mutually promised by the agreement.

The same, to the Abbot and Brothers of Grottaferrata.

Having been constituted in our presence (*And below:* [*cf. c.* 6, *On Religious Houses, III.* 36.]) Although in the instrument *of the aforesaid bishop's grant* there was expressed a certain penalty that the party not observing the contract would pay to the one observing it, nevertheless, since each party is convicted by its own confession of having acted contrary to it—for your party withheld the pension from the Bishop of Lavita, while the bishop exacted a procuration from the same church, as the aforesaid steward proposed—we render each party absolved from it.

Chapter VIII

Latin source headnote: If a witness is imprisoned because of vacillation, he does not incur infamy.

The same, to the Prior of Saint Fridianus and Master B., Canon of Pisa.

Concerning those things about which you wished to consult us (*And below:* [*cf. c.* 16, *On Accusations, V.* 1.]) [*We wish you to know concerning this that, in our presence, the case had been begun concerning the business for which you sent us your letters.*] But the cleric who, because he had varied and vacillated before you, was captured and detained at our mandate does not incur infamy. *But, etc.* (*cf. c.* 8, *On Compelling Witnesses, II.* 21.) [*Given at the Lateran, on the third day before the Ides of February, in the fifth year of our pontificate,* 1203.]

Chapter IX

Latin source headnote: One bound to pay a certain quantity on a certain day under a penalty is not bound to the entire penalty if he pays part within the term.

The same, to the Bishop of Spoleto.

G. and A., rectors of the clerics *of the parish* of Saint Fortunatus, transmitted their complaint to us that, when they had been condemned to you by a certain arbitration for forty pounds, and a penalty of thirty pounds had been imposed upon *them* if they did not pay those pounds to you within the appointed term, after thirty-three pounds had at last been paid in *that* term, on account of the seven remaining *pounds*, by means of certain letters of ours obtained with the truth suppressed, you obtained that they be condemned to you for the aforesaid thirty pounds by the delegated judge, *our beloved son Paul, our subdeacon*. Therefore, because it does not become you to forget episcopal moderation to such an extent that, panting after dishonorable gains, you desire to be enriched with another's loss, we command [*and strictly enjoin*] *your fraternity by apostolic writings* that, content with payment of the *aforesaid* seven pounds, you do not henceforth trouble the aforesaid rectors concerning the penalty of thirty pounds, *as was judicially determined by our beloved son G., cardinal deacon of Saint Nicholas in the Tullian Prison*. [*Given at Rome, at Saint Peter's, on the third day before the Ides of January, in the ninth year,* 1207.]

Chapter X

Latin source headnote: Those who kill a prelate are deprived of the benefices and fiefs that they have from the church over which that prelate presided; they shall not be restored to them or to their heirs, nor ought any others newly to be granted to them. And today similar penalties have been increased for one killing, capturing, or placing a bishop under ban; concerning these, see the Clementine Si quis suadente, under the same title.

The same.

It reached the ears of our apostolate that, when certain of your parishioners had wickedly slain with diabolical boldness I., *the late* Bishop of Vicenza of good memory, your predecessor, the fiefs and benefices that they held from the Church of Vicenza had been taken from them by sentence after much deliberation. Therefore, since they are to be punished with an even greater [*indeed*] penalty, we, *adhering to the footsteps of Pope Celestine of good memory, our predecessor*, by apostolic authority prohibit both you and your successors from restoring the aforesaid benefices [*further*] to them or their heirs,

or from newly conferring any others upon them. [*But if anyone, etc. Given at the Lateran, on the twelfth day before the Kalends of April,* 1198.]

Chapter XI

Latin source headnote: One who breaks out against a judge is punished at the judgment of the superior.

The same.

The beloved son *James*, Bishop-elect of Saint P. at Montes, *coming to the Apostolic See, a grave complaint against the beloved sons, the Abbot of Molesme and I., Archdeacon* [*of Châlons*], *set forth, asserting that they* [*against him*] *had proceeded wrongly in his case, which had been committed to them. And when the beloved son T., a cleric, had come to our presence with their letters containing the proceeding of the case, and the same James endeavored to impugn that proceeding in many ways, asserting that their report was false in certain matters, we, because the aforesaid cleric had no mandate except to contradict or to impetrate, for greater caution thought that the proceeding itself ought neither to be confirmed nor quashed,* [*commanding you by apostolic writings that, having summoned the parties and heard what is proposed on both sides, if you find that the aforesaid judges proceeded reasonably, you confirm their proceeding and cause it to be firmly observed through ecclesiastical censure, with the obstacle of appeal removed. Otherwise, having annulled it as shall be just, you are to proceed in the same case according to the form of the former letters, causing what you decree to obtain due firmness. But if you find any of the monks bound by the bond of excommunication on this account, you shall absolve them according to the form of the Church, enjoining upon them what shall by law be enjoined.*] *But because it often happens that, against the false assertion of an unjust judge, an innocent litigant cannot prove a true denial, since by the nature of things there is no direct proof of a negative fact, lest falsity prejudice truth or iniquity prevail over equity, it seems necessary and equitable that, when someone proposes a lawful exception, prepared to prove it either to decline the judgment or to repel the claim of the other, if perhaps by word or deed he withdraws from it, or does not prove it within a competent term to be fixed by the judge, the restrained judge should not proceed before applying the suitable precaution of instruments or witnesses concerning this, through which, if necessary, the truth can be established, so that, if a dispute arises against his report or proceeding, the assertion of the judge himself may be strengthened by proofs of this kind; so that, with this moderation applied, deference is so given to honest and discreet judges that the justice of the innocent is not injured through imprudent and unjust ones. And,* lest judicial authority vanish, when the litigant's dishonesty has been established, one rashly breaking out against the assertion of the judge can be punished with a worthy penalty according to the judgment of the superior. [*But the witnesses, etc. Given at the Lateran, on the Nones of January, in the thirteenth year,* 1211.]

Chapter XII

Latin source headnote: Patrons, advocates, or vice-lords who claim for themselves more in churches than the laws permit are restrained by ecclesiastical censure; and if, by themselves or through others, they kill the prelate or a cleric of the church, they lose what they have from the church, and their descendants to the fourth generation are not admitted to the clergy or placed over religious houses.

The same, in the general council.

In certain provinces the patrons, advocates, or vice-lords of churches have raised themselves to such insolence that not only, when vacant churches ought to be provided with suitable pastors, do they introduce difficulties and malicious obstructions, but they also presume to dispose according to their

own will of possessions and other ecclesiastical goods; and, what is horrible to say, they do not fear to break out into the slaughter of prelates. Therefore, because that which was devised as an aid for defense ought not to be turned back to the harm of oppression, we expressly prohibit patrons, advocates, or vice-lords from henceforth usurping more concerning the foregoing things than is found permitted in law; and if they presume to act contrary to this, let them be most strictly restrained by canonical severity. Nevertheless, with the approval of the sacred council, we decree that, if patrons, advocates, feudatories, vice-lords, or other beneficiaries of any church presume with nefarious boldness, by themselves or through others, to kill or mutilate the rector or another cleric of that church, the patrons shall entirely lose the right of patronage, the advocates the advocacy, the feudatories the fief, the vice-lords the vice-lordship, and the beneficiaries the benefice. And lest the memory of vengeance be prolonged less than that of the excess, not only shall none of the foregoing things pass to the heirs, but the descendants of such persons to the fourth generation shall in no way be admitted into the college of clerics, nor shall they attain the honor of any prelacy in houses of regulars, unless they have been mercifully dispensed with.

Chapter XIII

Latin source headnote: While a lord remains excommunicated, his subjects do not owe fidelity; and if he has persisted in it for a long time and, having been admonished, has not obeyed the Church, they are absolved from their obligation to him.

Honorius III, to the Provost, Archdeacon, and H., Canon of Soissons.

We received the grave complaint of the *beloved sons* of the chapter of Lund that, when the *nobleman*, the Count of Register, had been bound by the bond of excommunication by judges delegated by the Apostolic See for the many injuries that he had inflicted upon them, he, *now* persisting in excommunication for two years and more, stubbornly refused to obey the law, contemning the keys of the Church *to the loss of his own salvation and the scandal of many*. Therefore, although obstinacy of this kind is not free from the suspicion of heretical depravity, nevertheless, wishing to spare the nobility of the aforesaid count *if perhaps, returning to his heart, he recovers from his error*, we command your discretion that, if the aforesaid count, *after having been diligently admonished by you, within fifteen days* after your admonition has not fully obeyed the law, you, *causing the sentence of excommunication delivered against him, as it was reasonably pronounced, to be inviolably observed until worthy satisfaction, and placing all his land and the places in which the same count shall have stayed under ecclesiastical interdict*, shall absolve the churches in which he is known to have some right from their obligation to him, *with the obstacle of any contradiction and appeal removed*, and shall announce that his faithful men, for as long as he persists in excommunication, are wholly absolved from their oath of fidelity to him. *But if perhaps even thus vexation does not give him understanding, he will not without reason be able to fear lest his obstinacy drive him into the infamy of heresy, which, when he wishes, perhaps he will not easily be able to avoid.*

Title XXXVIII: On Penances and Remissions

Chapter I

Latin source headnote: Public penance ought to be imposed for a manifest sin.

Pope Alexander.

Manifest sins are not to be purged by a hidden correction.

Chapter II

Latin source headnote: It sets down the penance of one who kills a priest.

From the Council of Mainz.

Upon one who kills a priest let a penance of twelve years be imposed according to the canons; *or, if he denies it, if he is free, let him swear with seventy-two, but if he is a serf, let him purge himself upon twelve glowing plowshares*. One convicted *of the offense* shall lack the military belt until the final time of his life and shall remain without hope of marriage.

Chapter III

Latin source headnote: After the circumstances have been considered, a discretionary penance is to be adjudged to one who exceeded the measure in defending himself.

Alexander III, to the Archbishop of Milan and his Suffragans.

The nobleman P. signified to us that, when F., called emperor, once returned from the City, he denied him the castle of Vernica. (*And below:*) Hence it happened that, after four castles had been destroyed, more than two thousand houses were destroyed, and many men killed, and other evils are *said* to have been committed there, which it would be long to recount individually. Therefore, because the aforesaid P. desires to be reconciled to God on this account *and to undertake a worthy penance, we command your fraternity by apostolic writings* that *you give him counsel concerning this and* mercifully impose a penance upon him according to what shall seem good, attending to the fact that he did this for his liberty and *for* devotion to the Church. Wherefore in these things you ought to have such discretion that both others and he are in no way held back from the service of the Church by the austerity of the penance, nor ought they *deservedly* to fear any danger to salvation.

Chapter IV

Latin source headnote: Indulgences granted by prelates to those not subject to them do not benefit them unless their own judges grant this.

The same, to the Archbishop of Canterbury.

But concerning your consultation whether remissions that are made at dedications of churches or to those contributing to the building of bridges benefit others than those who are subject to the persons granting the remissions, we wish your fraternity to hold [*firmly*] that, since no one can be bound or absolved by one who is not his judge, we judge that the aforesaid remissions benefit only those to whom their own judges specially granted that they should benefit them. And in this understand resolved the question in which it is asked whether one who communicates with an excommunicated person ought to implore the grace of absolution from his own bishop or from the bishop of the excommunicated person.

Chapter V

Latin source headnote: One who does not lay aside the intention of sinning is not truly penitent; nevertheless, his confession is received.

The same, to the Bishop of Beauvais.

As to the fact that certain persons, *as you assert*, come to confession concerning crimes and, although they wish to confess, nevertheless assert that they cannot abstain, we respond to your consultation in this way: you ought to receive their confession and furnish them counsel concerning their crimes, because, although penance of this kind is not true, nevertheless their confession is to be admitted, and penance *is* to be imposed by frequent and salutary admonitions.

Chapter VI

Latin source headnote: One who by way of penance ought to fast on bread and water on a certain day can, when bread is lacking, use other foods.

The same, to the Archbishop of Tribur.

Although the page of both the Old and New Testaments (*And below:* [*cf. c.* 3, *On Feasts, II.* 9.]) But if those who are bound by penance imposed upon them to pass certain days on bread and water do not have bread upon which to feed, let them be refreshed with legumes or fish or other foods if necessity demands it, discretion nevertheless being applied, so that they use these things not for delights but for *necessary sustenance alone*.

Chapter VII

Latin source headnote: Public penance is not imposed upon a Greek priest who procures, or deliberately neglects to prevent, the smothering of his children; but he ought to abstain from the office of the altar and otherwise do penance in secret. But if the offense is public, he ought to do penance publicly.

Clement III.

It has been asked *of us* whether public penance is to be imposed upon Greek priests, to whom it is permitted to make use of lawful marriage, if they request that it be imposed upon them for children who have been smothered. Therefore, we respond to your consultation in this manner: if, through their procuring or deliberate negligence, children are found smothered in beds, they ought perpetually to abstain from the office of the altar, and a penance graver than for laymen, but nevertheless not public unless the matter becomes public, ought to be imposed upon them; *they, however, shall not only cease from the execution of sacred orders, but, if they are below those orders, they shall in no way be assumed to them*. But *also*, if through their carelessness the children are found dead in cradles, and that matter was hidden, let penance be imposed upon them according to the judgment of the penitentiary, and, for the terror of others, let them abstain from the celebration of Masses for a time. [*Given at the Lateran.*]

Chapter VIII

Latin source headnote: A priest ought to determine penance according to the magnitude of the excess, the penitent's contrition, and other circumstances. This is what it says with respect to the title.

Innocent III, to the Bishop of Livonia and to the Brothers who are with him.

God, who his Church (*And below:* [*cf. c.* 11, *On the Life and Honesty of Clerics, III.* 1.]) But, since penance is to be moderated by the judgment of a discreet priest not so much according to the magnitude of the excess as according to the penitent's contrition, having weighed the quality of the person and considered all the circumstances concerning fornication, adultery, homicide, perjury, and other crimes, and especially the newness of the Church of Livonia, you shall impose a fitting penance upon offenders as you shall see to be expedient for their salvation. But, adhering to the footsteps of the Apostle, who says, *as we said before*, "I gave you milk to drink, not meat," you shall instruct them gradually in the faith, carefully teaching them the form of confession, the Lord's Prayer, and the Creed. In the meantime, nevertheless, you shall grant the sacrament of the body and blood of the Lord to those reborn in the font of baptism on the customary feast days and at the point of death. [*Given on the thirteenth day before the Kalends of May, in the fourth year,* 1201.]

Chapter IX

Latin source headnote: The confession of a woman who substituted another's child for herself, or conceived her own by adultery, and does not wish to disclose it to her husband, is heard.

The same, to the Cardinal Priest of Saint Lawrence in Lucina, Legate of the Apostolic See.

Of the office (*And below:* [*cf. c.* 38, *On Election, I.* 6.]) You signified *moreover* that a certain woman confessed to you in penance that, fearing lest her husband's possession devolve upon others, *induced by the counsel of a certain sorceress*, she drank the juice of certain herbs *daily*, and thus her belly swelled; and, thereby showing herself to be pregnant, *at last* she substituted another's child for herself. Fearing her husband, she does not wish to disclose the crime to him, and he believes without any doubt that the offspring is his own. Therefore, because through *our letters* you ask to be instructed whether penance is to be imposed upon her while this fraud continues, we respond *to your inquiry in this manner*: just as penance is not to be denied to a woman who, while her husband was ignorant, conceived offspring from adultery, although she fears to confess it to her husband, so penance ought not to be denied to this woman either, especially if by "others" you understand strangers to whom she fears her husband's possession would devolve; but fitting satisfaction ought to be imposed upon her by a discreet priest. *Finally, etc.* (*cf. c.* 42, *On the Sentence of Excommunication, V.* 39.)

Chapter X

Latin source headnote: An abbess cannot bless nuns, hear confessions, or preach publicly.

The same, to the Bishops of Valencia and Burgos, and to the Abbot of N. of the Cistercian Order.

Certain new things have recently been brought to our ears, *at which we marvel not a little*: namely, that abbesses *established in the dioceses of Burgos and Palencia* bless their own nuns, also hear their confessions concerning crimes, and, reading the Gospel, presume to preach publicly. Therefore, since this is equally discordant and absurd [*and is in no way to be tolerated by us*], we command *your discretion by apostolic writings* that, lest this be done henceforth, you take care firmly to prohibit it by *apostolic authority*, because, although the most blessed Virgin Mary was worthier and more excellent than all the Apostles, nevertheless the Lord committed the keys of the kingdom of heaven not to her but to them. [*Given at the Lateran, on the third day before the Ides of December, in the thirteenth year,* 1210.]

Chapter XI

Latin source headnote: During a general interdict, penance and viaticum are granted to the dying. This is the first point. Clerics who observed the interdict can be buried silently in a cemetery. This is the second. In conventual churches, clerics in twos or threes can say the hours in a subdued voice. This is the third. During an interdict, penance can be granted to those signed with the cross and to pilgrims. This is the fourth.

The same.

As regards you (*And below:*) *But because we have understood that some doubt whether, when viaticum is to be given to clerics or laymen at the end of life, anointing also is to be bestowed, and whether burial together with the other sacraments is to be granted to the dying; whether also in conventual churches divine offices can be celebrated in a subdued voice, with doors closed and those under interdict excluded; and likewise whether penance is to be imposed upon those receiving the sign of the cross and those visiting the shrines of the saints, we wish to cut away an uncertainty of this kind from the hearts of those who doubt. For* in that word by which we do not deny penance to the dying, we wish viaticum also, which is furnished to those who are truly penitent, to be understood, so that it *also* is not denied to the dying. But although through a general interdict both anointing and ecclesiastical burial are denied to all, nevertheless we grant by grace that clerics who die, provided that they observed the interdict, may be buried with silence in the cemetery of the church, without the ringing of bells and with all solemnities ceasing. And in conventual churches, two and two, or three together, may read the canonical hours but not sing them, with doors closed, those under interdict and those excommunicated excluded, and in a voice so subdued that it cannot be heard outside; since it has also been granted to regulars according to a privilege of the Apostolic See that, when a general interdict of a land occurs, it is lawful for them, with doors closed, excommunicated persons and those under interdict excluded, without bells being rung, to celebrate divine rites in a suppressed voice. But we do not deny to those receiving the sign of the cross that penance be imposed upon them, when they request it, out of reverence for the Crucified; and this can mercifully be granted to other pilgrims also.

Chapter XII

Latin source headnote: It is famous and very frequently alleged, and says this: Every person capable of fraud is bound at least once a year to confess to his own priest, or to another with his permission, and to receive the sacrament of the Eucharist at least at Easter. And a priest who reveals a confession is to be deposed and thrust into a monastery to do perpetual penance.

The same, in the general council.

Every faithful person of either sex, after reaching the years of discretion, shall faithfully confess all his sins by himself at least once a year to his own priest, and shall endeavor to fulfill according to his own strength the penance imposed upon him, reverently receiving the sacrament of the Eucharist at least at Easter, unless perhaps, on the counsel of his own priest, for some reasonable cause he judges that he should abstain from a reception of this kind for a time; otherwise, while living, let him be kept from entrance into the church, and, when dying, let him lack Christian burial. Hence, let this salutary statute be published frequently in churches, lest anyone assume a veil of excuse through the blindness of ignorance. But if anyone wishes for just cause to confess his sins to another priest, let him first seek and obtain permission from his own priest, since otherwise that priest cannot absolve

or bind him. But let the priest be discerning and cautious, so that, in the manner of a skilled physician, he pours wine and oil over the wounds of the injured man, diligently inquiring into the circumstances both of the sinner and of the sin, through which he may prudently understand what counsel he ought to furnish him and what kind of remedy to apply, using different trials to save the sick man. But let him take care altogether that by word, sign, or any other manner he does not in any way betray the sinner. Yet, if he needs more prudent counsel, let him seek it cautiously without any expression of the person, because we decree that one who presumes to reveal a sin disclosed to him in the penitential judgment is not only to be deposed from the priestly office but also to be thrust into a strict monastery to do perpetual penance.

Chapter XIII

Latin source headnote: Physicians called to the sick ought before all things to induce the sick person to confession, and not to persuade him of anything for bodily health that tends toward danger to souls.

The same, in the same council.

Since bodily infirmity sometimes proceeds from sin, the Lord saying to the sick man whom he had healed, "Go, and sin no more, lest something worse happen to you," by the present decree we enact, and strictly command physicians of bodies, that, when it happens that they are called to the sick, before all things they admonish and induce them to call physicians of souls, so that, after provision has been made for the sick person's spiritual salvation, they may proceed more salutarily to the remedy of bodily medicine, since, when the cause ceases, the effect ceases. Indeed, among other things, what gave cause for this edict was that certain persons, lying upon a bed of sickness, when they are advised by physicians to make provision concerning the salvation of their souls, fall into a condition of despair, whence they more easily incur danger of death. But if any physician, after this constitution of ours has been published by the prelates of the places, is found a transgressor of it, let him be kept from entrance into the church until he has competently made satisfaction for a transgression of this kind. Furthermore, since the soul is much more precious than the body, under threat of anathema we prohibit any physician from advising a sick person, for bodily health, to do anything that is turned to the peril of the soul.

Chapter XIV

Latin source headnote: Collectors of alms ought not to be admitted without letters of the Apostolic See or of the diocesan bishops; and even then they are not to propose anything beyond what is contained in those letters. This is the first point. And they ought to be modest and abstain from unsuitable lodging places and expenses. This is the second. At the dedication of a basilica, remission ought not to exceed one year, and at the anniversary of the dedication, and in letters of indulgence granted by someone other than the Pope, it ought not to exceed forty days. This is what it says to the end.

The same, in the same council.

Since from this (*And below:* [*cf. c.* 2, *On Relics and the Veneration of Saints, III.* 45.]) We also prohibit collectors of alms—some of whom, falsely representing themselves as others, propose certain abuses in their preaching—from being admitted unless they exhibit genuine letters of the Apostolic See or of

the diocesan bishop; and even then let them not be permitted to propose anything to the people beyond what shall be contained in those letters. We have thought that the form that the Apostolic See commonly grants to such persons should be expressed, so that diocesan bishops may moderate their letters according to it. It is as follows: "Since, as the Apostle says, we shall all stand before the judgment seat of Christ to receive according to what we have done in the body, whether it was good or evil, we ought to anticipate the day of the final harvest with works of mercy, and, with a view to eternal things, to sow on earth what, when the Lord renders it, we ought to gather in heaven with multiplied fruit, holding a firm hope and a right confidence, because one who sows sparingly shall also reap sparingly, and one who sows in blessings shall also reap eternal life from blessings. Therefore, since the resources of the hospital itself do not suffice for the support of the brothers and needy persons resorting to such a hospital, we admonish and exhort all of you in the Lord, and enjoin upon you for the remission of sins, that from the goods bestowed upon you by God you furnish them pious alms and welcome aids of charity, so that through your assistance provision may be made for their poverty, and through these good things and [*through*] others that you shall do by the Lord's inspiration, you may be able to attain eternal joys." But let those who are sent to seek alms be modest and discerning, and let them not lodge in taverns or other unsuitable places, nor make useless or costly expenditures, taking every care lest they wear the habit of a false religious profession. In addition, because through indiscreet and excessive indulgences, which certain prelates of churches do not fear to grant, both the keys of the Church are contemned and penitential satisfaction is enervated, we decree that, when a basilica is dedicated, the indulgence shall not be extended beyond one year, whether it is dedicated by one bishop alone or by several; and thereafter, at the time of the anniversary of the dedication, the remission granted from imposed penances shall not exceed forty days. (*And below:*) We command that this number of days also regulate letters of indulgence that are sometimes granted for any cases, since the Roman Pontiff, who possesses the fullness of power, has been accustomed to observe this moderation in such matters.

Chapter XV

Latin source headnote: An archbishop can grant indulgences within his province according to the form of the general council. This is what it says. And it speaks concerning the preceding chapter at the end.

Honorius III.

You sought to be made certain by our response whether you can grant general letters of remission throughout your province. We therefore respond briefly to your fraternity that you can freely grant letters of this kind throughout your province, yet in such manner that you do not exceed the statute of the general council.

Chapter XVI

Latin source headnote: A bishop and the others concerning whom the letter speaks can choose a provident confessor for themselves without the permission of their superiors.

Gregory IX.

Lest danger to souls threaten because of a delay of penance, we permit bishops and other superiors, as well as lesser exempt prelates, to choose for themselves a provident and discreet confessor even

without the permission of their superior.

Title XXXIX: On the Sentence of Excommunication

Chapter I

Latin source headnote: A prepubescent person who struck a cleric can be absolved by the bishop; and one who strikes a cleric in jest or for the sake of discipline, even if he is of full age, is not excommunicated. But one who does so from hatred is, and is absolved by the Pope.

Alexander III, to the Archbishop of Sens.

But concerning that matter about which you sought counsel *from us—whether scholars, if they strike one another at full or lesser age, or clerics or religious men in a cloister, according to that canon by which it was enacted that those who lay violent hands upon clerics are to be sent to the Apostolic See to be absolved, ought to come to the same see for their absolution; to your inquiry in this manner* we respond: if clerics below the years of puberty strike one another, or one strikes another, they are not to be sent to the Apostolic See, because their age excuses them. Nor *even* if clerics are of full age and it happens that they strike one another not from *hatred*, *envy*, or *indignation*, but from playful levity; nor is a master to be sent if he strikes a clerical scholar with a view to discipline or correction, because in their cases a violent laying on of hands cannot be imputed. But if the same scholars or secular clerics strike one another from hatred, they ought to come to the Apostolic See for their absolution.

Chapter II

Latin source headnote: The abbot absolves monks who strike one another. The same applies to regular canons; and, if the abbot's discretion is deficient, recourse is had to the bishop.

The same, to the same.

But monks and regular canons, in whatever manner they strike one another in the cloister, are not to be sent to the Apostolic See, but are to be subjected to discipline according to the providence *and discretion* of their abbot; and if the abbot's discretion does not suffice for their correction, the providence of the diocesan bishop is to be applied.

Chapter III

Latin source headnote: A doorkeeper who has struck a cleric, but not gravely, can be absolved by the bishop. This is the first point. An official who deliberately lays a hand upon a cleric is absolved by the Pope. This is the second. One who, repelling force with force, strikes a cleric is not excommunicated. This is the third. One who strikes a cleric found shamefully with a close female relative is not excommunicated; it is otherwise with a remote relative, and a close relative is defined as in the letter.

The same, to the same.

But if *someone* serving as doorkeeper of some authority, acting maliciously under the pretext of his office, injures a cleric, he can be absolved by his bishop, unless perhaps he gravely wounded the same cleric. But an official cannot merit the benefit of absolution for laying hands upon a cleric without the mandate of the Roman Pontiff, because no layman is given such great authority over a cleric, unless

perhaps, when keeping back a rushing crowd, he injures a cleric not deliberately but by accidental mischance. But if anyone repels or injures with force a cleric who brings force upon him, he ought not on this account to be sent to the Apostolic See, provided that he immediately repels force with force, since all laws and all rights permit force to be repelled with force. Nor is one to be compelled to come to the Apostolic See who has laid violent hands upon a cleric found shamefully with his wife, mother, [*or*] sister, or his own daughter. But if he catches [*him*] in fornication or adultery that he commits with one who is not related to him by so close a line of consanguinity, or [*otherwise*] lays violent hands upon him, he will not be immune from that sentence of excommunication.

Chapter IV

Latin source headnote: One who strikes a cleric while probably ignorant that he is a cleric is not excommunicated; nevertheless, he ought to prove his ignorance by oath, and, if he refuses to furnish this, he ought to be held as excommunicated.

The same.

But if anyone lays violent hands upon a cleric who wears his hair long, *being ignorant that he was a cleric*, he ought not on this account to be presented before the apostolic presence, nor even to be marked by excommunication, provided that he was ignorant that the man was a cleric; or, if this is doubtful, provided only that he personally furnishes an oath that he had been ignorant that the man was a cleric. But if he is unwilling to furnish the oath, because it is established that he laid violent hands upon a cleric, it is fitting to abstain from him as from an excommunicated person until he is absolved at the mandate of the Supreme Pontiff.

Chapter V

Latin source headnote: One who strikes a cleric or religious is excommunicated and is absolved by no one other than the Pope, except at the point of death.

The same.

It is *not doubtful or uncertain to you, as we believe*, that those who lay violent hands upon clerics or canons, or converts of any religious order, incur a sentence of excommunication by the constitution of the council, and cannot obtain the benefit of absolution except at the point of death without the Roman Pontiff.

Chapter VI

Latin source headnote: Women who have fallen under the canon Si quis suadente are absolved by the bishop. The same applies to persons who are not their own masters, or are delicate, concerning whom it is doubtful that they could conveniently approach the curia. And this is what it says down to § Illi. — § 1. One who commands a cleric to be struck is excommunicated, just like the one striking him. This is what it says.

The same.

Women or *also* other persons who are not their own masters can be absolved by the diocesan bishop if they have laid violent hands upon a cleric. But concerning those who possess great power and are so delicate that they cannot endure the labor of coming to the Apostolic See, *if they have laid violent*

hands upon clerics, we respond that the status of the person and the truth of the affair are first to be intimated to the Roman Pontiff, and according to his counsel such persons are to be corrected for the crime committed. § 1. But those who, not by themselves, but by their authority or mandate, cause others violently to lay hands upon clerics are to be sent to the Apostolic See *with every excuse ceasing*, since he truly commits the deed by whose authority or mandate the offense is proved to be committed.

Chapter VII

Latin source headnote: One excommunicated for laying hands upon a cleric, although the matter is hidden, is absolved by the Pope alone.

The same.

Moreover, if any lay violent hands upon their brothers and, led by penance, not convicted but privately, *as you assert*, seek pardon from you, you ought more *earnestly* to admonish and induce them to make suitable satisfaction to those whom they injured and to present themselves before the apostolic presence, since they cannot be absolved by you or *by any* other without a special mandate of the Roman Pontiff.

Chapter VIII

Latin source headnote: Even privileged persons are bound to avoid an excommunicated person, and are excommunicated for laying hands upon a cleric.

The same.

No *Templar monks, however,* can protect themselves by a privilege of the Apostolic See so that they need not avoid excommunicated persons and be avoided as excommunicated for a violent laying of hands upon clerics.

Chapter IX

Latin source headnote: One who strikes a monk or religious convert ought to be publicly announced as excommunicated and avoided until he has been absolved by the Pope.

The same, to the Bishops and other Prelates established throughout Gaul.

But if any of your parishioners lay violent hands upon monks or converts of the aforesaid order, you shall, with the remedy of appeal removed and according to the tenor of the general decree, publicly announce them as excommunicated, and you shall cause them to be more strictly avoided as excommunicated until they make suitable satisfaction to those injured and present themselves before the apostolic presence with your letters.

Chapter X

Latin source headnote: The form of the precept that ought to be given under the binding force of an oath to one who is absolved after being excommunicated for a violent laying of hands upon a cleric is set down.

The same, to the Archbishop of Genoa.

From the tenor of your letters it became known to us that the canon B. *of Saint Mary of the Vineyards* laid violent hands upon a certain subdeacon. (*And below:*) Therefore we command *your fraternity* that, after receiving an oath from the *canon* that he ought to obey your mandate, you absolve him in our stead from the sentence by which he is bound, and under the binding force of the oath command him that henceforth he not lay violent hands upon a cleric, monk, *Hospitaller*, or convert of any religious order, unless in defending himself, or unless he does so by mandate of their prelates, or unless he has a ministry of prelacy or teaching over him, or is known to be his associate in the same church.

Chapter XI

Latin source headnote: A bishop absolves one excommunicated for striking a cleric if he cannot approach the Pope without danger; nevertheless, he ought to command him to approach the Pope when the impediment ceases.

The same, to the Bishop of Le Mans.

Henceforth you should know that, if anyone is bound by the bond of excommunication for a violent laying of hands upon a cleric, and if, having mortal enemies or other just excuses by which he is reasonably excused from the journey, he cannot present himself before the apostolic presence without danger, it is lawful for the diocesan bishop, after receiving an oath according to the custom of the Church, to impart to him the grace of absolution. But it is to be enjoined upon him under obligation of the oath that, as soon as he has an opportunity, he approach the Roman Pontiff to receive the apostolic mandate.

Chapter XII

Latin source headnote: When the Pope delegates the absolution of an excommunicated person, he commands that security for obeying the mandates of the Church be received.

Urban III, to the Archbishop of Sens.

To these things *however*, when [*sometimes*] a controversy is conducted before delegated judges between [*some*] of your parishioners, *or between them and others, frequently, as you assert, it is enjoined upon you by those judges by apostolic authority that you strike with ecclesiastical constraint one of the parties, perhaps contemning obedience to the judgment, or for another reasonable cause. But those who are commanded to lie under excommunication obtain letters from the Apostolic See to other judges, by whom it is nevertheless commanded to you by apostolic authority that you hold as absolved those who had been excommunicated at the mandate of the former judges. Concerning this your discretion doubts what you should do amid diversity of this kind. To which we briefly respond that, if the letters obtained to the second judges were not obtained with the truth suppressed, you ought to hold them absolved at their mandate, especially since* the Roman Church is by no means accustomed to delegate to others absolution from the sentence of delegated judges unless it is expressly contained in the letters of commission that sufficient security is to be furnished by those who ought to be absolved, that they ought to obey the judgment of the Church.

Chapter XIII

Latin source headnote: One excommunicated under the canon "If anyone, at the devil's persuasion," whether rich or poor, is to be absolved by the Pope or his legate; it is otherwise for a woman, or a sick or mutilated person, who can be absolved by the bishop.

Clement III.

It is known (*And below:*) *Your fraternity, diligently attending to this, certainly sought to be informed concerning those who with some rashness lay violent hands upon clerics, and who do not possess the means to be able to labor to the Apostolic See—namely, how salutary provision can be made for them. Concerning this* we have thought that your consultation should be answered in this manner: women *whom the frailty of sex impedes*, the old and infirm, or those impeded by loss *of other* members, although they do not come to the Apostolic See, can *receive the remedy of salvation from the bishops and by their office* be restored to the communion of the faithful, satisfaction having been made according to their means to those upon whom it is established that injuries were inflicted by them. But all others, whether poor or rich, must be presented to the Apostolic See or its legate in order to obtain the benefit of absolution. But if, during an infirmity *of this kind*, the benefit of absolution is granted through fear of death, after an oath has been furnished it shall be enjoined upon them that, after they have been restored to health, they approach the Roman Church or its legate to receive the apostolic mandate concerning such matters.

Chapter XIV

Latin source headnote: Before denunciation, one excommunicated for a violent laying of hands upon clerics is to be avoided, unless the fact is unknown. This is the first point. One who kills a cleric who, having contemned the clerical habit, involved himself in enormities, is not excommunicated. This is the second.

The same.

Since not by man (*And below:*) *It was therefore asked of us on your behalf whether you are bound to abstain from communion with one who, for a rash laying of hands, fell under the sentence before he is publicly announced as excommunicated; and whether the killers of clerics or of those priests who, having cast aside the ministry of the order received, do not fear to pollute themselves with homicides in public wars or even apart from wars—since in feasting, drunkenness, pillaging, and other enormities they rage equally with laymen, or worse—fall under the canon of a sentence already imposed. Therefore, concerning the second* consultation we respond in this manner: you ought to abstain from communion with one who, for a sacrilegious laying of hands upon a cleric, fell under the edict of excommunication, even if he has not been denounced, *still* unless perhaps this was known to you alone. In that case you will avoid him only privately for as long as he is tolerated by the Church, so that, at least suffused with the blush of shame, he may be compelled *in this manner* to make satisfaction for the hidden excess. But concerning the article of the second question, we respond that the *lay* killers of clerics or priests who, *as has been said*, having contemned the clerical habit, shamelessly involve themselves in tyranny and enormity, are by no means restrained by the canon of a sentence already imposed, in hatred of clerical excess and *for* the terror and correction of similar persons; nevertheless, let a fitting penance somewhat harsher than if they had committed such things against *altogether* lay persons be enjoined upon them. *Moreover, because no one is to be despaired of while he is established in a mortal body, since that which is deferred is sometimes afterwards completed with more mature counsel. Finally, concerning what you consulted us—whether by common law it is lawful for you and your suffragans to absolve those who are struck by a sentence of excommunication for a rash laying of hands—we answer this more manifestly: that, with the exception of certain persons contained in the decretals of Alexander III being observed, this is lawful for no one unless he enjoys a special privilege of the Apostolic See. Nevertheless, wishing to provide by paternal dispensation for those who dwell in such remote parts of your province, by the present*

letters we grant to your fraternity that, if bodily impotence, poverty, or some unavoidable and manifest necessity impedes those who are thus excommunicated by the law itself, provided that they make satisfaction to those whom they offended and do some penance for their own correction and the terror of others, you, supported by apostolic authority, may absolve them from the sentence of excommunication, provided that enormous bodily injury or death did not ensue from such a striking. Assuredly, in all these matters, if anyone diligently examines the statutes of the holy fathers, he will find that we have answered nothing new, but have, as though by a certain hand of solicitude, renewed what is ancient.

Chapter XV

Latin source headnote: One is not to communicate with an excommunicated person before absolution, although he has sworn to obey the mandates of the Church or has made a settlement with the person offended. This is the first point. One defamed concerning excommunication is not to be communicated with unless he purges himself or is absolved as a precaution. This is the second point.

The same.

Since you desire *to be more fully instructed by a rescript of the Apostolic See concerning what your fraternity ought to observe in these matters that contain doubt, we, who, although unworthy, are compelled by the office of administration undertaken to respond to the consultations of individuals,* [*wish by the present rescript to resolve the knots of your questions, and we commend your prudence in this: that, although you have skill in canon law and enjoy the counsel of prudent men, nevertheless, for greater evidence and to set a form before others, you seek the counsel of your mother, the sacrosanct Roman Church, in which you show that you have the spirit of counsel and fortitude, as a discreet and prudent man.*] The tenor of the first question was of this kind: whether others are to communicate with an excommunicated person who swore to obey the mandate of the Church and to whom, before absolution, the bishop restored communion, and whether the bishop ought to do this. To this question *indeed* we respond in this manner: since the oath of security that those who are excommunicated now furnish was introduced according to the Church's custom as a precaution rather than *from* the rigor of the canons, and is not reckoned of such force that, unless the benefit of absolution follows, one who is excommunicated ought to be restored to the communion of others—especially since he has not obtained absolution from that oath, and it is established that he was excommunicated, and it is true that he has not been absolved—neither the bishop nor others ought to communicate with him unless, after the oath has been furnished, he has been absolved according to the form of the Church; because *according to the canons of the Apostles and the statutes of Pope Fabian*, one who knowingly communicates with an excommunicated person *is to be deprived of communion; indeed, according to the statutes of Isidore*, he contracts the penalty of excommunication with him. Following *the statutes of the canons, and especially those of Alexander III of pious memory, our predecessor*, we have thought that this conclusion should be imposed upon the second question: if there is public report that someone struck a cleric, neither the bishop nor anyone else ought to communicate with him unless, at the judgment of the bishop, he has purged himself concerning this, or, for *greater* caution, obtains the benefit of absolution. In the third place your discretion asked whether, if a cleric struck *by someone deposited a complaint before his bishop and was prepared to produce witnesses, and* through the mediation of the bishop made a settlement with the one who struck him, and the latter was reconciled to him, he ought thereby to be admitted to the communion of others. Concerning this we respond briefly to you that, although the one who laid violent hands appears to have made

satisfaction in this manner to the one whom he injured, nevertheless he is recognized not thereby to have made satisfaction to the Church, which he offended; and unless the form of the Church introduced for the absolution of such persons, *as was said above*, is observed, one is not to communicate with him. *Moreover, we resolve all the perplexities of the final question: that one who keeps a cleric captive, even if he has not laid violent hands upon him, is placed in the same category of crime, is to be avoided, and is not to be restored to fraternal communion unless he has been absolved according to the form of the Church, as was said above.*

Chapter XVI

Latin source headnote: A priest who casts a regular out of a church when she disturbs divine offices is not excommunicated.

The same.

Coming to the Apostolic See, I., the bearer of the present letters, showed us by his assertion *set forth* that, while he was celebrating the morning offices, a certain nun, entering the *same* church and playing with another cleric, created an impediment whereby he could not render divine worship to God; hence the aforesaid priest, moved so that he could attend more freely to the celebration of divine things, laid hands upon her in order to put her outside the church and, when she would not leave, by dragging her compelled her to remain outside the church. But on this account you avoided him as excommunicated and caused him to be avoided by others. Therefore, we command you *by apostolic writings* that, if the matter is so, you do not henceforth avoid him, since we by no means see him as excommunicated on this account.

Chapter XVII

Latin source headnote: Those excommunicated for a light laying of hands upon a cleric can be absolved by the bishop. This is what it says according to the common reading, and the text is singular.

The same.

It came to us (*And below:* [*cf. c.* 5, *On Compelling Witnesses, II.* 21.]) *But those who, impeded by sickness, cannot labor to the Apostolic See for the benefit of absolution, you can absolve after receiving from them the customary oath, in such manner that, when restored to their former health, they present themselves before the apostolic presence. But concerning this we believe that you can freely dispense sufficiently with the female sex, children, and the old.* [*Moreover, after the clerics of the city have been summoned, you can cleanse churches that have been polluted by an effusion of blood or semen with a procession and the sprinkling of holy water, as is written in the ordinal.*] We have thought that absolution of those *also* who inflicted upon clerics an injury not enormous but moderate and light should be committed to the judgment of your fraternity.

Chapter XVIII

Latin source headnote: A cleric who knowingly and voluntarily participates with one excommunicated in divine offices is excommunicated by the greater excommunication and is to be absolved only by the Pope. This is what it says according to Panormitanus.

The same.

He signified to us (*And below:*) But we do not doubt that those clerics [*who*] knowingly and voluntarily participated with persons excommunicated by us, and received them in the offices, are enveloped with them by the same sentence of excommunication; and we also wish them to be sent back to us, with the information of your letters, to obtain the benefit of absolution.

Chapter XIX

Latin source headnote: One excommunicated for laying hands upon a cleric, or an incendiary after publication, is absolved by the Pope alone.

The same.

Your fraternity was led to consult us *whether only those are to be sent to the Apostolic See who, falling under the canon of a sentence already imposed, turned violent hands against clerics, and whether they cannot be freed from the same sentence except by the Roman Pontiff. Hence* we respond to your fraternity in this manner: not only *those* who lay rash hands upon clerics, but also incendiaries, once they have been publicly denounced by a sentence of the Church, are to be sent to the Apostolic See for the benefit of absolution, *and are to be absolved only by the Roman Pontiff. But those who presume to receive ecclesiastical benefices from the hands of laymen are not accustomed to labor to the Apostolic See for such an excess.* [*Concerning the priest, etc.; cf. c.* 4, *On Sick Clerics, III.* 6.]

Chapter XX

Latin source headnote: Legates *de latere* can absolve those excommunicated for laying hands upon clerics.

The same.

Recourse *is to be had to the eminence of the Apostolic See whenever an article of doubt emerges, so that a person may receive and observe with a more ready conscience what shall have been answered to him by the Apostolic See concerning a doubtful matter, insofar as the sentence of its truth is known to be strengthened by the more certain prerogative of that dignity, which in blessed Peter, prince of the Apostles, received the breadth of prelacy before all others*. But, as it was intimated to our ears on your behalf, it is doubtful to you whether those who incurred excommunication for laying hands upon clerics or other religious persons obtain the benefit of absolution when they are absolved by cardinal legates who are sent from the side of the Roman Pontiff for a time, although those legates do not show an express mandate *for themselves* concerning this. Concerning this we wish it to be observed by you *and your suffragans* that you hold, without any scruple of hesitation, as absolved those whom it is established obtained the benefit of absolution *from such men*. [*Given at the Lateran.*]

Chapter XXI

Latin source headnote: A general excommunication binds only the subjects of the one pronouncing it.

The same.

It was asked of us on your behalf whether, if someone pronounces thus, "Whoever commits theft, let him be excommunicated," this general clause is referred to the subjects of the one imposing the excommunication, or is extended generally to all who are not within his jurisdiction. To this we say

certainly that only his subjects are bound by this sentence, unless perhaps the greater and broader authority of the delegating person has conferred more *upon him*.

Chapter XXII

Latin source headnote: Those who despoil churches by breaking into them are excommunicated and, after denunciation, are absolved only by the Pope.

The same.

The *beloved sons*, the canons of Reggio, complained to us that I. de Malafrena and his followers violently broke into *the church of Viliaco and certain other* churches of the bishopric of Reggio, and did not at all hesitate to despoil them, *and in no way hesitated to plunder certain men of the Church of Reggio*. Therefore, since *these things* are grave and ought not to be passed over with closed eyes, we command that, if the matter is so, you publicly announce the aforesaid sacrilegious persons as excommunicated, *with candles publicly lighted and appeal ceasing*, and cause them to be more strictly avoided as excommunicated until they make suitable satisfaction to those who suffered injury, repair the damages caused by them, and present themselves before the apostolic presence with your letters containing the truth of the matter.

Chapter XXIII

Latin source headnote: One who strikes or even kills a cleric who, having laid aside the clerical habit, involves himself in savage enormities, is not bound to go to the Apostolic See for absolution. Thus it can be summarized generally.

The same.

We have understood from your letters that a certain priest *of your diocese*, because he presumed falsely to call himself the king's son and, after taking up arms, caused sedition [*in the province*] and war, was ordered by the *beloved son*, Count B., to be beaten *through the villages*; and afterwards, having been handed over to the gallows at his mandate, he expired. *Therefore, since you intimated that both the count himself and the other participants in this deed wished to make satisfaction concerning this, by the present page* we have thought that your fraternity should be answered that, if the aforesaid priest committed excess in such manner and, *bearing arms*, was killed not while repelling but while inflicting injury, it does not seem to us that his killers ought on this account to be compelled to approach the Apostolic See to obtain absolution; but you, who know well the merits of the persons, shall enjoin fitting penance upon them. [*But, etc.; cf. Compilation II, c.* 4, *On Vows, III.* 21.]

Chapter XXIV

Latin source headnote: An ecclesiastical judge who causes a cleric to be struck by a layman, even for the sake of discipline, is excommunicated; and both he and the one striking are bound to go to the Pope for absolution.

The same.

We received the consultation of all of you, by which you asked us whether *that* layman falls under the edict of excommunication who, at the order of an abbot in whose service he abides, presumes to lay rash hands upon a cleric, *or* monk, or convert, especially where there is no cause for which he ought

to be beaten. But it seems to us that, unless the abbot does this for the cause of regular discipline in his own person, or, if necessity presses, orders it to be done through a cleric or monk, both the one who commands such persons to be beaten and those who beat them, even if a cause existed, by no means escape the sentence of excommunication until they come to the Apostolic See.

Chapter XXV

Latin source headnote: A cleric walking about as a layman who does not come to his senses after a third admonition loses clerical privilege.

The same.

In our hearing a consultation of this kind was proposed on your behalf: whether clerics who, having abandoned the clerical habit, are in no way ashamed to bear military arms ought, if bodily injury is inflicted upon them or they redeem themselves from captivity, to enjoy that immunity of clerics by which one who rashly lays hands upon a cleric is marked as excommunicated by the law itself. To these things we respond briefly to you that, since one who commits against the Church implores the aid of the Church in vain, and the law of secular princes furnishes a sufficiently effective argument for this response—in which it is manifestly provided that a matron whose chastity has been assailed cannot bring an action for injuries if she was found in the clothing of a prostitute—clerics of this kind, if they *have been* admonished a third time by their prelates *and* have refused to lay down military arms, ought not to have any assistance from the privilege of clerics.

Chapter XXVI

Latin source headnote: One excommunicated for laying hands upon a cleric, if impeded from going to the curia, can be absolved by an inferior; but, when the impediment ceases, he is bound to visit the curia to receive the apostolic mandate.

The same.

Because you seek the responses of the Apostolic See *even concerning those things about which you do not doubt and have very fully recognized what ought to be observed concerning those very things, we commend your fraternity in the Lord all the more insofar as, in those things that are expressed in the institutions of the sacred canons, you desire and intend to proceed by our authority. Indeed, your fraternity asked us whether* [*one*] *who confesses that he has fallen under the canon of a sentence already imposed, and cannot be induced to come to the Apostolic See to be absolved, can or ought to merit the benefit of absolution from the bishop or even from a simple priest; and whether priests who are bigamists or husbands of widows may celebrate the solemnities of Masses after their wives have entered the way of all flesh. But although what ought to be observed concerning these things is defined in the sacred canons, nevertheless* we have thought that *at present* your fraternity should be answered that one who asserts that he has fallen under the canon of a sentence already imposed can obtain the benefit of absolution only through the Apostolic See or its legate, unless perhaps he is *established* at the point *of death*, or is so burdened by poverty, infirmity, or old age that he cannot undertake the labor of coming to the Roman Church, or is held back from this by another canonical impediment. But from these persons it is customary to exact in the form of an oath that, when their strength has been recovered and opportunity granted, they ought to visit the Roman Church in person. [*Concerning the priests, etc.; cf. c.* 3, *On Bigamists Not to Be Ordained, I.* 21.]

Chapter XXVII

Latin source headnote: One bound by several excommunications, although arising from the same act, who obtains absolution with one cause or one excommunication expressed, is not held as absolved with regard to another.

Innocent III, to the Archbishop, Dean, and Precentor of Lyon.

When, for the case that was being conducted between the *beloved sons* G. and F., archdeacons of the Church of Chalon, we granted to them as auditor the *beloved son G., cardinal deacon of Saint Adrian*, the proctor of G. *the archdeacon alleged among other things* that, when F. the archdeacon had rashly laid violent hands upon the succentor *of the Church of Chalon, who was exercising the office of the diaconate*, in the common dormitory, and had dragged him through the cloister while beating him, you, brother archbishop, caused him publicly to be announced as excommunicated for the violent laying of hands and the violation of the immunity of the church. (*And below:*) *We therefore, committing the case itself to your examination*, command your discretion *by apostolic writings* that, if it is established to you that the said F. the archdeacon was excommunicated for a twofold cause and expressed only one in the letters that he obtained *from the Apostolic See* concerning his absolution, after admonition has been given you compel him as an excommunicated person to make satisfaction to his church for the other cause *through ecclesiastical censure, with appeal removed*. [*But the aforesaid, etc. The expenses, etc.* (*cf. c.* 6, *On Proctors, I.* 38.)]

Chapter XXVIII

Latin source headnote: With an excommunicated person who dies in excommunication, however contrite he may have died, there is to be no communion before absolution, nor is prayer to be made for him, although he is absolved with respect to God. But if the preceding contrition is established to the Church, he will be absolved even after death by the one by whom he would have been absolved while alive; and his heirs are compelled by the Church to make satisfaction for him.

The same, to the Abbot of Saint Andrew.

It has often been asked of us whether, if an excommunicated person in whom there were manifest indications of penance, and through whom it did not stand that he was not reconciled to ecclesiastical unity, died without receiving the benefit of absolution, he is to be held as absolved by the Church, and whether alms are to be received for such a person and prayer made by the faithful. *But so that we may express more openly through the supposition of an example what we intend: a certain priest and regular canon, as you intimated to us through your letters, labored under public infamy because he approached a certain married woman; the woman's husband and his blood relatives rashly laid violent hands upon him, on account of which they were denounced by the bishop as lying under the sentence of excommunication. But afterwards they approached the same bishop and, after furnishing in his hands a bodily oath that they would obey the judgment of the Church, received in mandate from him that on this account they should present themselves before the apostolic presence. And when one of them prepared himself for the journey of coming, he was slain by certain of his rivals and buried outside the cemetery of the church. And although the friends and blood relatives of the slain man were gravely moved against the killers, nevertheless they would remit to them every rancor and offense provided that the body of the slain man were handed over for ecclesiastical burial. Therefore, perhaps it would seem to some in this case that, since not an article of necessity but contempt of religion excludes the sacrament, and the divine judgment of the Church* [*can and*] *ought to imitate divine judgment, since manifest signs of penance preceded in the aforesaid slain*

man and he is believed on this account to have been absolved before God, he is also to be held as absolved by the Church. But on the contrary, since one is bound with respect to God before the Church triumphant by guilt alone, but with respect to man before the Church militant by sentence alone, when the bond of guilt is remitted, he is absolved before God, but he is not absolved before men unless and until the bond of the sentence is relaxed; otherwise the absolution of the Church would appear in no way necessary if, by contrition of heart alone apart from the priestly office, the rigor of ecclesiastical discipline were relaxed.

We therefore respond briefly to your consultation *by the common counsel of our brothers* that the judgment of God always rests upon truth, which neither deceives nor is deceived; but the judgment of the Church sometimes follows opinion, which often happens both to deceive and to be deceived. On this account it sometimes happens that one who is bound before God is loosed before the Church, and one who is free before God is bound by an ecclesiastical sentence. Therefore, the bond by which a sinner is bound before God is dissolved in the remission of guilt; but that by which he is bound before the Church is relaxed when the sentence is remitted. The evangelical account manifests this in the raising of Lazarus, whom the Lord first raised and afterwards commanded the Apostles to loose after he was raised. Hence, however much a person has taken care to humble himself after furnishing an oath that he would obey the mandate of the Church, and however many signs of penance have preceded, if nevertheless, prevented by death, he was unable to obtain the benefit of absolution, although he is believed to have been absolved before God, nevertheless he is not yet to be held as absolved before the Church. Yet he can and ought to be aided by the benefit of the Church, [*namely*] that, if the penance of the living man was established by evident signs, the benefit of absolution should also be bestowed upon him after death. Nor is it an obstacle that the power of binding and loosing men upon earth is read as having been attributed to the Church, as though it could not loose and bind those buried under the earth, and that it is written, "Let there be no communion with the dead man with whom there was no communion while he was alive," since, although there was no communion with him, nevertheless there ought to have been communion with one whom not contempt of religion but an article of necessity impeded; and in certain cases designated by the canons the Church is read to have bound and loosed the dead. But so that in one and the same affair we may both preserve rigor and display gentleness, we decree that absolution of that dead man who, while living, would have been absolved by the Apostolic See is to be sought from the Apostolic See; but, for the foregoing cause, we grant that other persons may be absolved by those by whom they would have been absolved while they lived. But let the form of absolution be observed, so that it be done with a penitential psalm and both the Lord's Prayer and another customary prayer. His heirs also, if after admonition they are unwilling, are to be compelled by ecclesiastical constraint to make satisfaction for him. [*Given at the Lateran, on the second day before the Nones of May,* 1199.]

Chapter XXIX

Latin source headnote: One who keeps a cleric in custody or chains without injury is excommunicated. This is the first point. One who knowingly communicates with an excommunicated person in the crime is excommunicated and, unless difficulty impedes, ought to be absolved by the one who excommunicated him, with an oath. But one who communicates outside the crime can be reconciled by a simple priest without an oath. This is what it says to the end.

The same, to the Bishop of Wrocław.

Recently your discretion asked us what is to be done concerning those laymen who *violently*, yet without injury, keep clerics in public or private custody, or even thrust them into chains, *whether they fall under the canon of a sentence already imposed so that by the act itself they are bound by the bond of excommunication, like those who rashly lay violent hands upon clerics*; and whether those who knowingly communicate with persons excommunicated by name can be absolved from excommunication through confession by a simple priest, or absolution ought to be sought by them from the bishop or archbishop; *and whether, after penance has been done, you may dispense with those who, although they are not bigamists by law, are nevertheless called bigamists in fact because, while established in sacred orders, they have joined second women to themselves in cohabitation in the manner of marriage*. We therefore respond to your inquiry *in this manner* and in order: concerning the first article of the consultation, we do not believe that laymen escape the penalty of excommunication, although bodily injury did not ensue from their act, short of which violence is very often wickedly perpetrated against clerics. But concerning the second question, we believe that a distinction is to be made: whether one who communicates with a person excommunicated by name knowingly communicates in the crime with the criminal, furnishing him counsel, aid, or favor; or otherwise in prayer or a kiss, or praying with him, or even eating with him. In the first article, since such a person [*both*] communicates in the crime and participates with the criminal, and thereby by reason of the condemned crime is seen to offend against the one who condemned it, absolution will then rightly be sought from him or his superior, since *according to canonical sanctions* an equal penalty constrains the one acting and the one consenting. But in the second case he will be able to obtain the benefit of absolution from his bishop or his own priest. For although even then one communicating with an excommunicated person is bound not by a sentence of a judge but of the law, nevertheless, because the maker of the canon did not specially reserve his absolution to himself, he is seen by that very fact to have granted to others the faculty of relaxing it. But the one who communicates with an excommunicated person according to the first manner ought to be absolved with an oath; while the one who, according to the second manner, *participates with him* can be reconciled without sworn security. But if, for some just cause, it is difficult for the person to be absolved to approach the one who excommunicated him, we grant by indulgence that, after security has been furnished according to the form of the Church that he will obey the mandate of the one who excommunicated him, he may be absolved by his bishop or his own priest. [*The third, etc.; cf. c.* 4, *On Bigamists Not to Be Ordained, I.* 21. *Given at the Lateran, on the seventeenth day before the Kalends of June,* 1199.]

Chapter XXX

Latin source headnote: The oath of an excommunicated person to obey the mandates of the Church does not have the force of absolution. This is the first point. No one is bound to communicate with an excommunicated person except the excepted persons; otherwise one communicating with an excommunicated person incurs the lesser excommunication and is to be excommunicated with the greater, unless the latter was excommunicated together with his participants, in which case the one communicating would then be excommunicated with the greater excommunication.

The same, to the Archbishop of Esztergom.

Because you seek *to be made certain in doubtful matters by our rescript, so that according to it you may moderate the judgment of your discretion, we commend your fraternity with worthy praises in the Lord. Indeed, your fraternity consulted us* [*whether an altar upon which an excommunicated person presumed to celebrate divine rites*

ought to be reconsecrated, and] *whether there is to be communication with an excommunicated person who furnished sworn security that he would obey the mandate of the Church but has not yet obtained the benefit of absolution; and whether any persons can, and which persons are even bound to, communicate with an excommunicated person. It also asked what penalty was to be imposed upon those who communicate with excommunicated persons unwillingly or involuntarily, and what is to be done concerning priests who steer ships into battle and fight, and those who incite others but do not fight. But to these things* we respond to your fraternity in this manner: one is not to communicate with an excommunicated person, although he has confirmed by oath that he will obey the mandate of the Church, until he has been absolved by the Church; otherwise absolution would not be necessary after the oath. *But whether, if not contempt of religion but an article of necessity excluded the benefit of absolution, it is lawful to communicate with such a person, at least at death, because you did not at all inquire through your letters, we have not thought that it should be answered at present*. But no one knowingly is *at all* bound to communicate with a person excommunicated by name, except certain persons who are specially excused through that chapter of Pope Gregory, "Since many." But those who presumptuously participate with persons excommunicated by name, apart from the persons noted by the said canon, are to be bound by the bond of excommunication unless, after perhaps being admonished, they desist from participating with them. But it is otherwise if they knowingly communicate with one who has been bound by sentence with the bond of excommunication together with his participants; for then they too incur the sentence of excommunication. [*But because, etc*. (*cf. c.* 5, *On Penalties, V.* 37.) *Given at the city of Castella, on the sixth day before the Ides of October,* 1198.]

Chapter XXXI

Latin source headnote: Those who were previously bound to an excommunicated person by familiar service are bound to communicate with him; others are not bound by necessity, although sometimes they can do so when urgent necessity exists.

The same, to the Doctors of Decrees at Bologna.

Among other things that *our venerable brother*, the Archbishop of Esztergom, *formerly caused to be proposed to our apostolate, humbly consulting, he also inquired, if we remember rightly, whether anyone can communicate with an excommunicated person and who are even bound to do so; to whom* we recall that we responded *concerning that article* that no one *at all* is bound knowingly to communicate with a person excommunicated by name, except certain persons who are specially excused through that chapter of Pope Gregory, "Since many." But from this *our* response, *as we have received, a great* occasion for disputation arose for certain persons, some conceding that the persons named in the aforesaid chapter are bound to communicate with an excommunicated person, especially those who were previously bound by obligation to communion with them, while others assert that they can lawfully communicate with *excommunicated persons* if they wish, but are nevertheless not bound to this by necessity. Therefore, so that interpretation may proceed from the source from which the law issued, we have thought that ambiguity of this kind should be resolved in this manner: since certain persons noted *previously* in the aforesaid chapter were, before the pronouncement of the sentence, bound to adhere in familiar service to those against whom the sentence of excommunication was *subsequently* delivered, and are not afterwards bound to the contrary, since *that same* obligation still endures, by the operation of the benefit of the canon they are not released from their former obligation but are bound to familiar service, and consequently are *also* bound to communion, without which they

cannot furnish that service. But we do not believe this should be referred to all the persons of the chapter, so that they are subject to an obligation of this kind, since travelers, pilgrims, and merchants ought to abstain from communion with such persons unless an article of necessity threatens, as is manifestly gathered at the end; but only to those who are bound to such persons, constrained by a closer obligation. Nevertheless, they ought not to communicate with them in those things for which they are marked by excommunication, as in crimes, but ought altogether to abstain from them. *Hence we prudently responded in the foregoing consultation that not all persons, but certain ones who are specially excused through that chapter of Pope Gregory, are bound to communion of this kind in the aforesaid manner. But whether those persons also, because of the authority for punishing the crime more severely, should sometimes be prohibited by a sentence of excommunication from communion with such persons—because this was not asked, it was not answered.*

Chapter XXXII

Latin source headnote: If one excommunicated for laying hands knowingly receives orders, if he is a secular cleric, he is to be deposed; if a regular, he is suspended from execution of the order. With one who, in ignorance of the law or fact, receives orders while thus excommunicated, if he is a secular cleric, the Pope alone dispenses; if a regular, the abbot dispenses, provided that the ignorance is probable and the act is not grave.

The same.

Since the absolution of those who incur the stain of excommunication for a violent laying of hands upon clerics is reserved only to the Apostolic See, *except in* certain cases excepted by our predecessor, some persons, neglecting the ecclesiastical sentence, do not fear to receive ecclesiastical orders while placed under excommunication. But the apostolic oracle is rather often implored as to what ought to be done concerning them. Concerning these we believe that a distinction is to be made, *as is found in the things set forth below*: such persons either know that they are ensnared by the bond of excommunication; or do not remember the act for which they fell under the canon of a sentence already imposed; or, knowing the act but ignorant of the law, do not know that they are bound by it. If the first are secular clerics, we decree that they are to be perpetually deposed from the orders received. In the remaining cases, both archbishops and bishops should know that they do not have the faculty of dispensing without a special mandate of the Apostolic See; the absolution of such persons is also forbidden to them, since greater things are understood to be prohibited to those to whom lesser things are forbidden. Nevertheless, persons of this kind can be brought to the ears of the Roman Pontiff, so that a response may issue from him according to rigor or equity, as his discretion shall see ought to be done.

But if persons of this kind are cloistered, although it was enacted by Pope Alexander, *our predecessor of good memory*, that monks and regular canons, in whatever manner they strike one another in the cloister, are not to be sent to the Apostolic See, but are to be subjected to discipline according to the *discretion and* providence of their abbot, and, if the abbot's discretion does not suffice for their correction, the providence of the diocesan bishop is to be applied; and elsewhere it is said that an abbot cannot and ought not, without the permission of the Roman Pontiff, to absolve those fleeing from the world who have received the religious habit in a monastery and afterwards confess, among other things, that they committed such an offense by which they incurred a sentence of

excommunication by the act itself, although he can punish the presumption of the offenders with due penalty—we, nevertheless, favoring religious life and wishing to display greater grace toward them so that material for wandering may be removed, grant to their prelates that they can also impart the benefit of absolution to such persons, unless their excess was *so* difficult and enormous, as if it proceeded to mutilation of a member or effusion of blood, or a violent hand *was* laid upon a bishop or abbot, since such and similar excesses cannot be passed over without scandal. But if any cloistered person lays violent hands upon a religious person of another cloister, let him be absolved by his own abbot and by the abbot of the one who suffered the injury. But if he strikes a secular cleric, he can merit the grace of absolution only through the Apostolic See, so that scandal may be avoided. But if *also* it happens that these are promoted to orders, then, according to the foregoing distinction, those who knowingly caused themselves to be ordained in contempt of ecclesiastical discipline we decree to remain suspended from execution of the order and office received. But concerning the others, who do not have memory of the act or knowledge of the law, after the utility of the monasteries has been weighed and regular penance imposed and completed, their abbots will be able to dispense, unless the act was grave and notable, or the one who did it was adult and discreet, so that *strongly and forcibly* a presumption is made against forgetfulness or ignorance. But we command the abbots to observe this form diligently, lest one who abuses the power permitted to him deserve to lose the privilege.

Chapter XXXIII

Latin source headnote: A nun who strikes another nun, a convert, or a secular cleric falls under excommunication and can be absolved by the bishop of the place.

The same, to the Bishop of Pistoia.

Concerning nuns, your fraternity asked us by whom the benefit of absolution is to be bestowed upon them if they rashly lay violent hands upon one another, their male or female converts, or even clerics *serving in their monasteries*. Therefore, concerning this we respond to your consultation that, *by our authority*, they are to be absolved by the bishop in whose diocese *their* monasteries are situated. [*Given at the Lateran, on the third day before the Kalends of March,* 1202.]

Chapter XXXIV

Latin source headnote: Even a contract that cannot be carried out without communion is not dissolved or impeded by an excommunication supervening upon one who is bound to furnish something to a person not excommunicated.

The same, to all the Crusaders.

If truly *you repent of the offense and fully propose to make satisfaction for the sin, we believe—indeed, we know—that God is already placated toward you. Therefore, if the Venetians are induced to make satisfaction and merit obtaining the benefit of absolution, you will safely be able to sail with them and fight the battle of the Lord.* But if perhaps the Venetians wish neither to make satisfaction nor to be absolved, *seeing that they are said not to grieve but altogether to rejoice concerning the offense*, we permit you to cross by ship with them as far as the land of the Saracens or the *Jerusalem* province, according to what was agreed between you and them or shall honorably be agreed, communicating with them as little as you can, yet with grief and bitterness of heart and under hope of pardon. For, since they have already received from you the greater amount of the freight and cannot be induced or even constrained to restore it, if it were done

otherwise, you would seem to carry away loss from penance, but they a reward from contumacy, since they remain bound to you to discharge this debt, and that which is owed can be exacted and received from excommunicated persons. But it is provided in law that, if anyone passes through the land of heretics or of any excommunicated persons, he can buy and receive necessary things from them. Moreover, if the father of a household is bound by a sentence of excommunication, the household is excused from participation with him. Therefore, although the Doge of the Venetians, the lord of the ships, persists in excommunication as the father of a household, nevertheless you, as his household while you are in his ships, will not be reached by his excommunication, and you will be excusable before God if, while existing in the ships of excommunicated persons, with grief of heart under hope of penance, you communicate with [*the excommunicated persons*] themselves in those matters in which you cannot avoid their communion. [*But, etc.*]

Chapter XXXV

Latin source headnote: A prelate can and ought to imprison an incorrigible cleric subject to him, and laymen, without fear of excommunication, can with the permission of prelates seize clerics and lead them to judgment.

The same, to the Bishop of London.

That you may *take thought for your reputation and salvation, and may so restrain the audacity of the wicked that you protect the innocence of the good from them, you humbly consult us concerning those things that touch the pastoral office, so that, made secure by our response, you may more commendably discharge the duty of the solicitude enjoined upon you.* Indeed, you consulted us whether clerics who offend gravely, and who cannot safely be assigned to monasteries to do penance—because, since they do not repent of the things committed, if an opportunity of fleeing were seized they would flee the prison of the cloister and would involve themselves more criminally in their former crimes—can be consigned by you or their other prelates to close custody; *and whether laymen, if they detect clerics in great crimes, incur the canon of the sentence pronounced, since they can neither apprehend them nor drag them before judges unless they lay violent hands upon them. To the first, therefore,* We respond that, since prelates ought to correct the offenses of their subjects, and it concerns the public welfare that crimes not remain unpunished and that through the audacity of impunity those who had been wicked not become more wicked, they not only can but also ought to detain under close custody *superior* clerics, after they have been canonically condemned of a crime, who, since they are incorrigible and cannot be guarded in monasteries, would easily lapse into like or worse things. Laymen, however, can without incurring a sentence of excommunication seize clerics and drag them to judgment, if need be, even violently, provided nevertheless that they do this by mandate of the prelates to whose jurisdiction those clerics are subject and to whom it belongs to correct criminals, since not they themselves but those by whose authority they do it are seen to do this; provided nevertheless that their violence extends no further than the defense or *rather* the resistance of the clerics requires. [*Given at Anagni, the fourth day before the Ides of December,* 1203.]

Chapter XXXVI

Latin source headnote: He is excommunicated who lays violent hands upon a cleric, even one willing, even if he does this in satisfaction for a preceding injury. This is what it says, and it is a notable case.

The same, to the Archbishop of Braga.

It sometimes happens *in your parts, and it is held by the custom of the region, as your fraternity intimated to us,* that clerics, if they offend someone and wish to make satisfaction to the person offended, according to the custom of the country, which laymen *already* observe among themselves, voluntarily submit their bodies to thirty *or forty* or to more or fewer blows of rods, *which they frequently receive not under compulsion but willingly, not only from the hands of other clerics but also of laymen. Whence you humbly consulted us whether beaters of this kind incur the canon of the sentence pronounced.* We, however, respond to your fraternity concerning this *in this manner*: that a laying-on of hands of this kind, although not violent, nevertheless appears injurious, since that canon was promulgated not so much in favor of the ordained cleric as in favor of the clerical order. And therefore we both will and command that you prohibit this from being attempted henceforth *throughout the province of Braga*. But if, after a prohibition of this kind, any cleric voluntarily subjects himself [*to such a penalty, or a layman inflicts such a penalty upon him,*] *both* are to be excommunicated, provision being made that the cleric make competent satisfaction to the person who suffered the injury without injury to the clerical order, so that peace may reasonably be restored between them. [*Given at Rome at Saint Peter's, the seventh day before the Kalends of March, in the ninth year of our pontificate,* 1206.]

Chapter XXXVII

Latin source headnote: A slave excommunicated for laying hands upon a cleric is bound to go to the Apostolic See for absolution. But if from this the master, who was not at fault, would suffer grave loss, or the slave does this in fraud of him, he can be absolved by the bishop, if the injury was not enormous.

The same, to the Archbishop of Lyon.

It has been reported to us that, when some slaves *of your province*, on account of a violent laying-on of hands upon a cleric, incur the canon of the sentence pronounced, their masters alleging that they are unwilling to be without their slaves, they take no care to come to the Apostolic See to be absolved, evading ecclesiastical discipline by an occasion of this kind. Therefore, *by apostolic writings we command your fraternity* that you compel them to come to the Apostolic See to be absolved, since more deference must be shown to God than to man; unless they have done this in fraud, so that they might withdraw themselves from the service of their masters, or the masters themselves through this incur grave loss without fault of their own. For then in either case you will be able to absolve them by indulgence of our provision, since they are very far removed from the Apostolic See; but in recompense for the labor that they would endure on the journey, another satisfaction is to be enjoined upon them, provided the offense is not so grave and enormous that, for avoiding scandal and removing an example of this kind, slaves of this kind ought to come to the servant of the servants of God to be absolved. [*Given at Rome at Saint Peter's, on the Ides of January, in the eighth year,* 1206.]

Chapter XXXVIII

Latin source headnote: One excommunicated on account of participation with an excommunicated person, although he afterward attacks him, is not on this ground alone to be held absolved.

The same, to the Archbishop of Esztergom.

It has been established by the sacred canons (*And below:* [*cf. c.* 12, *On Burials, III.* 28.]) But *although* he who had voluntarily communicated with those excommunicated persons who, with all their supporters and participants, are bound by a sentence of excommunication, *afterward* returning to his heart, has at the mandate of the church attacked the excommunicated persons whom he had previously favored, nevertheless, until he has received the grace of absolution, he is not to be held absolved; nor, if he dies in a war of this kind, are absolutions or offerings to be received for him, or prayers offered to the Lord, unless his repentance while living has been established through evident signs, and the benefit of absolution is imparted even to the deceased according to the tenor of a certain constitution of ours.

Chapter XXXIX

Latin source headnote: A person once excommunicated must always be avoided as excommunicated, unless he lawfully proves that he has been absolved.

The same, to the Bishop of Assisi.

As *you intimated to us by your letters, when you subject certain clerics or laymen of your diocese to excommunication, their faults requiring it, they afterward return to you, no satisfaction having been made, without testimonial letters, and say that they have received the benefit of absolution. You humbly asked to be instructed by us whether they ought to be believed in this matter, since, as you say, on account of a cause of this kind your sentences are held in contempt by your subjects. Therefore, unwilling to indulge the malice of men,* We respond to your fraternity in this manner: unless those excommunicated by you bring back to you concerning their absolution our letters or those of him to whom we have committed our office in this matter, or it is otherwise lawfully established for you that they have been absolved, you, *placing no faith in their absolution*, are to hold them as excommunicated just as before and cause them to be avoided. [*Given at the Lateran, the second day before the Ides of August,* 1199.]

Chapter XL

Latin source headnote: If one excommunicated by a bishop appeals to the metropolitan, he can be absolved by him; nevertheless the metropolitan, wishing to defer to his suffragan, can remit him to him, when he was excommunicated on account of a manifest offense. And before absolution he who wishes to prove that he was unjustly excommunicated is not heard; it is otherwise if he wishes to prove that the sentence is null.

The same, to the Archbishop of Sens.

By your letters *you intimated to us that, when our venerable brother the Bishop of Auxerre had promulgated a sentence of excommunication against the beloved son the Archpriest of Auxerre, the archpriest presented himself before you and offered sufficient security that he would stand by the mandate of the church, humbly seeking that you bestow upon him the benefit of absolution. But you, wishing to defer to the bishop mentioned, admonished him repeatedly that he absolve the archpriest. But because he did not obey the admonitions, you took care to absolve the excommunicated man, whom the bishop does not hold absolved, inasmuch as he alleges that his absolution did not pertain to you. Whence you ask what is to be done henceforth in similar cases. For* it appears to some that, since a question is not carried to the metropolitan through an appeal, and an excommunicated person does not have a voice for appealing, inasmuch as he is separated from the church, whether he has appealed or not, the metropolitan ought not to bestow upon him the benefit of absolution. But from the words

of a certain epistle, which scholars *say is decretal, and* allege to have issued from Pope Alexander *of good memory, our predecessor*, it is held that, if a sentence of excommunication was promulgated against someone before an appeal, the metropolitan, having received from him before joinder of issue an oath according to the custom of the church, ought to absolve him, unless he wishes to defer to the diocesan bishop and remit him to him to be absolved. There it is also consequently inferred that excommunicated persons are neither to be heard before they have been absolved nor to be remitted to those from whom they had appealed. But in the Council of Sardica it is found that he who has been cast off by the bishop is to address the neighboring bishops, and his case is to be heard and more diligently examined; but the bishop who justly or unjustly cast him off is patiently to accept that the matter be discussed, so that either his sentence may be approved by several or may even be amended. Nevertheless, before all things have been diligently *and faithfully* examined, no one before cognizance of the case is to presume to associate in communion him who had been deprived of communion. We therefore believe a distinction must be made whether someone alleges that he was marked by excommunication after a lawful appeal had been interposed, or that an intolerable error was manifestly expressed in the form of the excommunication; in these cases he ought to be admitted to proof of them even if he does not seek absolution, but until they have been established he ought to be avoided in other matters, although the Apostolic See has been accustomed to absolve even such persons as a precaution. But in other cases, unless he implores the grace of absolution, he ought not to be heard, lest he appear to despise the ecclesiastical sentence and through this be bound more greatly by his contempt. But if he has humbly sought the benefit of absolution, the metropolitan ought to absolve him, unless he has decided that deference is to be shown to his suffragan; but if the suffragan is unwilling to bestow upon him the benefit of absolution according to the form of the church, the metropolitan is nevertheless to absolve him, having received security that he ought to obey his mandate, and thereafter is to hear the case and, with justice mediating, decree what is canonical. But if perhaps the bishop had excommunicated his subject on account of a manifest offense, the metropolitan ought not to absolve him unless the suffragan, having been requested, maliciously denied him the benefit of absolution. [*Given at the Lateran, the thirteenth day before the Kalends of March, in the fifth year of our pontificate,* 1203.]

Chapter XLI

Latin source headnote: If the Pope greets an excommunicated person in his letters, he does not absolve him on this account.

The same.

If it should perhaps sometimes happen that our letters are directed with a formula of greeting to those who by apostolic authority are subject to excommunication, the sentence of excommunication is not to be believed relaxed on this account, since it happens that letters of this kind are obtained through ignorance or negligence, excessive occupation, or even *through* surreption, *as is said recently to have happened among the people of Piacenza. Since they are bound by the bond of excommunication on account of the iniquity that they committed against God and his church, they boast that they are as though absolved through letters of this kind, which we are said to have sent to them on behalf of the Templars, although we are not mindful of such letters; for even if they were exhibited to them when already excommunicated, perhaps they had nevertheless been obtained earlier. Therefore, by apostolic writings we command your fraternity that you avoid them more strictly*

as excommunicated until they recover from their error, observing a like judgment in similar cases if ever a like thing should happen. [*Given at Rome at Saint Peter's, the ninth day before the Kalends of March,* 1203.]

Chapter XLII

Latin source headnote: One excommunicated by several prelates for several causes is not to be restored to communion although he wishes to make satisfaction concerning one cause; and, if absolution is obtained while the other causes are suppressed, the absolution is not valid.

The same, to C., Cardinal Priest of Saint Lawrence in Lucina, Legate of the Apostolic See.

Of the office (*And below:* [*cf. c.* 38, *On Election, I.* 6.]) Lastly you asked whether he who for several offenses has been bound by the bond of excommunication by several prelates having jurisdiction over him, and wishes to make satisfaction to one of the prelates concerning only one offense, is to be absolved by him concerning that for which he wishes to make satisfaction to him, and, although he has not made satisfaction concerning another, can be announced to the other as absolved. *But because concerning this there are different opinions of different scholars, we, wishing at present to prejudice no one,* Respond to you concerning this article only that an absolution surreptitiously obtained does not profit one who suppresses the truth, and one who understands the truth ought not to grant an absolution of this kind.

Chapter XLIII

Latin source headnote: The word of God can lawfully be preached to excommunicated and interdicted persons. This is the first point. And during a general interdict baptism and anointing with chrism on the forehead, and penance for the dying, can be granted. This is the second point.

The same, to the Bishop of Ferrara.

You seek to be instructed by our response whether, when the citizens of Ferrara are bound by sentences of excommunication and interdict, it is lawful for you once a week or a month to convoke men and women at some church, to whom you might preach the word of God and induce them to correction. Concerning this *we respond to your fraternity in this manner*: you will be able to do this without scruple of conscience when you see it to be expedient, provided that no divine office is celebrated for them contrary to the form of the interdict. Moreover, you asked whether, since the city of Ferrara is subjected to interdict *and excommunication*, and therefore all ecclesiastical sacraments except the baptism of infants and the penances of the dying are interdicted there, it is lawful for you to sign baptized children upon their foreheads. Concerning this *we respond to you in this manner*: just as children can be baptized, so also those baptized can by you be anointed upon their foreheads with sacred chrism for confirmation.

Chapter XLIV

Latin source headnote: If a spouse knows for certain an impediment to the marriage, he ought not to render the debt, but rather to suffer excommunication; but if he believes this from a probable and discerning cause, he can render the debt but not exact it; but if from a slight and rash cause, having put aside his conscience, he can render and exact it.

The same.

Responding *briefly* to your inquiry, we believe a distinction must be made whether one of the spouses knows for certain an impediment to the marriage on account of which he cannot exercise carnal commerce without mortal sin, although he cannot prove it before the church, or does not know *an impediment of this kind* for certain but believes it. In the first case, *therefore*, he ought rather humbly to sustain a sentence of excommunication than to commit mortal sin through carnal commerce. But in the second case *indeed* we distinguish whether he has a conscience of this kind from slight and rash belief or from probable and discerning belief. And indeed, at the counsel of his pastor, after the conscience of slight and rash belief has been cast out, he can lawfully not only render but exact the conjugal debt. But when conscience strikes the mind from probable and discerning belief, although not evident and manifest, he can indeed render the debt, but he ought not to demand it, lest in either respect he commit an offense either against the law of marriage or against the judgment of conscience. *You, therefore, are to proceed according to the response written above concerning that article about which you wished to consult us.*

Chapter XLV

Latin source headnote: Through abandonment of habit and tonsure a cleric does not lose clerical privilege before a threefold admonition.

The same.

It sometimes happens [*that, while clerics distinguished by the character turn aside to base profits and involve themselves in secular business, they render the clerical name abominable to the hearts of the weak.*] Indeed, as we have learned, the *noble man* the Count of Flanders [*and the noble woman Matilda, relict of the late Philip, Count of Flanders,*] intimating it, there are certain persons in your diocese who show nothing of the cleric either in the manner of their tonsure, in the form of their garments, or in the quality of their business, but display themselves as clerics to evade punishment. For when they are dragged before public tribunals concerning offenses that they commit with secular extravagance, having cut their hair so that they can circumvent vengeance, they represent themselves as clerics, alleging with their lips the privilege of the clerical forum, who by their deeds a little before had denied the clerical state, [*and while through a sudden tonsure they evade the punishments that, while untonsured, they merited by perverse deeds, the audacity of offending is nourished in them through confidence of impunity; and while they offend with impunity, they are made a scandal to some and an example to others.*] But because he who abuses the power permitted to him deserves to lose a privilege, and he who commits against the law vainly invokes the aid of the law, we will and command that such persons, if after being admonished by you a third time they have scorned to amend themselves, be made bereft of that immunity which is known to have been instituted for the protection of clerics and the restraint of lay violence. [*You, finally, etc. Given at the Lateran, the fifth day before the Ides of January, in the fifteenth year of our pontificate,* 1213.]

Chapter XLVI

Latin source headnote: He who did not give prior admonition and communicated with him is repelled from denouncing an excommunicated person.

The same.

In the presence of the beloved son (*And below:*) Nor can the canons object to their dean that he is excommunicated, since he had neither been admonished nor assailed concerning this, nor had they

on this account caused him to be avoided; rather, the bishop at table, and the canons even in divine offices, had communicated with him.

Chapter XLVII

Latin source headnote: He is excommunicated who deceitfully permits a cleric to be struck, since he could prohibit it and did not prohibit it.

The same.

Of how great a presumption and rashness it is to lay violent hands upon rulers of the church, *the Lord testifies in the Gospel, who declares that he is afflicted in his ministers, and elsewhere attested that he is crucified again in the prince of the Apostles. This the quality of the penalty also manifestly declares, since the sentence of excommunication strikes offenders in the act itself if they presume to perpetrate violence not only against our brothers and fellow bishops but even against clerics of lesser order.* Moreover, lest the presumption of some suppose that only the authors of violence of this kind *are* to be punished, catholic authority condemns those doing and those consenting to be punished by an equal penalty, interpreting *even* those who, when they can, fail to oppose a manifest crime as favoring the offenders. [*Considering this carefully hitherto, Pope C. of good memory, our predecessor, had announced the authors and supporters of the capture and detention of our venerable brother the Archbishop of Salerno to be bound by the bond of excommunication, etc.*]

Chapter XLVIII

Latin source headnote: A prelate ought not to excommunicate a subject unless a competent admonition has preceded, and from a manifest and reasonable cause; and the penalty expressed here is imposed upon one acting to the contrary. Likewise, the subject who falsely complains that he was unjustly excommunicated is punished; and it adds what the law is if a prelate, saying that he erred, wishes to absolve the excommunicated person, and the adversary appeals lest he be absolved.

The same, in the general council.

With the sacred council approving, we prohibit anyone from presuming to promulgate a sentence of excommunication against another unless a competent admonition has preceded, with suitable persons present through whom, if need be, the admonition can be proved. But if anyone should presume to the contrary, even if the sentence of excommunication was just, let him know that entrance to the church is interdicted to him for one month, and that he is nevertheless to be punished with another penalty if it shall seem expedient. He is also to take diligent care not to proceed to the excommunication of anyone without a manifest and reasonable cause. But if perhaps he has proceeded to it in such a manner and, when humbly requested, has taken no care to revoke a proceeding of this kind without difficulty, the person aggrieved is to lodge before the superior a complaint concerning the unjust excommunication. If the superior can do so without danger in delay, he is to remit him with his mandate to that excommunicator, to be absolved within a competent term; otherwise, by himself or another, as he shall see to be expedient, having received sufficient security, he is to impart to him the office of absolution. And when it has been established against the excommunicator that the excommunication was unjust, the excommunicator is to be condemned to pay damages to the excommunicated person; nevertheless, otherwise also, if the quality of the fault shall demand it, he is to be punished at the superior's discretion, since it is no slight fault to inflict so

great a penalty upon an innocent person, unless perhaps he erred from a probable cause, especially if he is of praiseworthy reputation. But if the complainant has proved nothing reasonable against the sentence of excommunication, he likewise is to be condemned, for the vexation caused by the complaint of unjust excommunication, through a penalty to pay damages, or otherwise according to the superior's discretion, unless perhaps a probable error excuses him also; and he is to be compelled, after security has been received, to make satisfaction concerning that for which he was bound by a just excommunication, or he is to be reduced to the former sentence, to be inviolably observed until worthy satisfaction. But if the judge, recognizing his own error, is prepared to revoke such a sentence, and he for whose sake it had been rendered appeals lest the judge revoke it without satisfaction, he is not to defer to the appeal in this matter unless the error is such that there ought deservedly to be doubt concerning it; and then, having received sufficient security that before him to whom the appeal has been made, or before one delegated by him, he will obey the law, he is to absolve the excommunicated person. And thus he will by no means be subject to the penalty written above, taking every care that he not, with perverse will and to another's prejudice, falsely assert an error, if he wishes to escape the vengeance of canonical severity.

Chapter XLIX

Latin source headnote: He excommunicates heretics and all violators of ecclesiastical liberty.

Honorius III, to the Bishop of Bologna.

Let your fraternity know *that we* [*recently*], *in the basilica of the prince of the Apostles, in the presence of our dearest son in Christ Frederick, illustrious Emperor of the Romans, ever august* [*and King of Sicily*], *during the celebration of Masses, after we placed the diadem of the empire upon his head, by the counsel of our brothers and with candles lighted,* Excommunicate *on behalf of almighty God, and also by the authority of the* [*blessed*] *Apostles Peter and Paul and our own*, all heretics of either sex, by whatever name they are designated, and their supporters, receivers, and defenders, and also those who henceforth cause issued statutes and customs, *or rather abuses*, introduced against the liberty of the church, to be observed, *and* do not cause them to be removed from their statute books within two months after the publication of a sentence of this kind. Likewise we excommunicate the makers and writers of those statutes, and also the magistrates, consuls, rectors, and councillors of places where statutes and customs of this kind shall henceforth have been issued or observed, as well as those who have presumed to judge according to them or to write the judgments in public form. [*Given at the Lateran, the second day before the Nones of January, in the fifth year of our pontificate,* 1221.]

Chapter L

Latin source headnote: Brothers of the Hospital of Jerusalem excommunicated for laying hands upon a cleric or fellow brother can be absolved by their prior, unless the offense was difficult and enormous.

The same, to the Master and Brothers of the Hospital of Jerusalem.

It is provided by a canonical constitution that monks and canons regular, in whatever manner they have struck one another *in the cloister*, are not to be sent to the Apostolic See, but are to be subjected to discipline according to the discretion and providence of their abbot. But if the discretion of the abbot does not suffice for their correction, the providence of the diocesan bishop is to be applied,

unless the offense was difficult and enormous, on account of which recourse ought deservedly to be had to the Roman Church. We therefore, *inclining to your supplications*, have deemed that a statute of this kind is to be extended to you, establishing by the authority aforesaid that in such a case, unless greater providence is to be required, the benefit of absolution is to be bestowed upon your brothers through your prior, who, as we have heard, ought to be a priest.

Chapter LI

Latin source headnote: One excommunicated or suspended ought not to be absolved unless an oath has first been furnished; if, however, the oath cannot be obtained without scandal, absolution will be able to be made through a promise by hand.

The same, to the Cardinal Priest of the title of Saint Praxedes, Legate of the Apostolic See.

Concerning the fact that Greek monks and hermits, bound by a sentence of suspension and excommunication on account of disobedience, are unwilling to return to the mandate of the church except through a promise by hand, we have deemed that this is to be answered to you: that if they can in no way be induced to furnish an oath according to the form of the church, on this occasion you will be able to receive them with a promise by hand, since sometimes, the qualities of places and times having been considered, something must be taken away from severity.

Chapter LII

Latin source headnote: When the force of a sentence is doubted, someone can be absolved as a precaution after furnishing an oath.

The same, to the Deans of Bourges and Chartres and the Subdeacon of Arles.

Our venerable brother the Bishop of Le Mans and *the beloved son H., canon of Tours*, proctor of *our venerable brother* the Archbishop of Tours, having been constituted in our presence concerning a certain sentence of suspension promulgated against the aforesaid bishop by that archbishop, we, *having heard and understood those things that were proposed by them concerning this before us, because the parties disagreed upon the fact in such a manner that it could not be fully established, by grace* relaxed the sentence itself as a precaution, the bishop himself in the presence of the said proctor having furnished a corporal oath that he would obey the mandates that the same archbishop should make to him on account of this, if it should be established that the *bishop* himself had been culpable in that for which the aforesaid sentence was rendered.

Chapter LIII

Latin source headnote: Officials of places in which there are statutes against ecclesiastical liberty are excommunicated unless they cause them to be erased; and the makers of the statutes are deprived of fiefs of the church.

The same, to the Bishop of Siena.

We have received the grave complaint of our venerable brother the Archbishop of Pisa, that *A., B., and* certain *other* citizens of Pisa, deputed by the magistrate and the people to issue the statutes of the city, *as though they savor perversely, have presumed to issue such things* in derogation of the Apostolic See and subversion of ecclesiastical liberty: that if any cleric or layman obtains apostolic letters to an

ecclesiastical judge against any layman of the district of Pisa, he is to be condemned in one thousand solidi unless he has renounced *such* letters; nor are the revenues of his possessions to be rendered to him, nor his fields cultivated, but rather they are to be subjected to the ban of the magistrate, *which will receive no one for the government of the city unless he has sworn that he will observe this; and this and every other magistrate who shall be in office for the time being will cause his successors to swear to the things stated above.* They established, moreover, that the clerics at their own expense are to cause the castle of Ripafracta to be guarded. But if they refuse, the magistrate is to be bound to proceed against them *according to what the council of the city shall prescribe, all of which the person who now presides over the aforesaid city confirmed by oath that he would firmly observe.* Therefore, *since the whole city of Pisa, which otherwise has cast aside the fear of God for so long that it is presumed now infected with error or close to infection, and since there is no doubt that both the makers of the statutes and that magistrate have on this account incurred a sentence of excommunication in addition to the mark of infamy*, we command your fraternity to take care to promulgate a sentence of excommunication against the councillors and officials of that city unless they cause the statutes themselves to be erased from their statute books, and suitable security to be given, as the matter requires, that they ought not to attempt similar things henceforth. Furthermore, since those makers of the statutes are said to hold many things from ecclesiastical goods in fief, take care nevertheless to announce them deprived of fiefs of this kind.

Chapter LIV

Latin source headnote: One speaking with an excommunicated person concerning matters tending to the salvation of the soul is not excommunicated, even if he interposes other words. - § 1. Preachers, especially those who cannot otherwise be sustained, can receive alms from excommunicated persons and persons detaining the goods of others. This is what it says. - § 2. It states certain cases in which one who strikes a cleric is not excommunicated.

Gregory IX.

Since wrongful acts are distinguished by will and purpose, he does not incur the sentence of excommunication who participates in conversation with an excommunicated person in those matters that pertain to absolution or otherwise to the salvation of the soul, although he even incidentally interposes other words so that he may profit more with him. § 1. Preachers also, who among excommunicated persons or other detainers of others' property in preachings and confessions act, as it were, the cause or care of those to whom the property itself is known to pertain, can lawfully receive alms from them, especially if they cannot otherwise have sustenance in that place. § 2. But if, by reason of an office that they hold in a church, or even if other senior clerics out of zeal of devotion, have perhaps lightly struck, for the sake of correction, boys or adolescents constituted in minor orders who disturb divine office, and those who under color of prelacy or a master's authority have struck subjects and scholars, they do not incur the sentence of excommunication. This is also to be said of those who have deemed that some persons of their household or relatives of inferior degrees are to be corrected in a similar manner so that they may be restrained from their insolences and be instructed in knowledge and good morals.

Chapter LV

Latin source headnote: One communicating with an excommunicated person in a damnable crime falls under major excommunication.

The same, to the Bishop of Astorga.

If the public concubines of clerics are marked by the severity of ecclesiastical censure, there is no doubt that those same concubinary clerics who, after the sentence has been rendered, communicate in the same crime with the criminals are enveloped by a sentence of major excommunication. [*Aqua, etc.* (*cf. c.* 9, *On the Consecration of a Church, III.* 40.) *Given at the Lateran, the twelfth day before the Kalends of June, in the seventh year of our pontificate,* 1233.]

Chapter LVI

Latin source headnote: One under minor excommunication can absolve someone from excommunication.

The same.

Power having been conferred upon two persons that, if they fall into minor excommunication, they may absolve each other from it, the power does not expire when each is bound by a bond of excommunication of this kind.

Chapter LVII

Latin source headnote: Ministers of churches are permitted to celebrate once a week during an interdict, when those conditions stated in the text concur.

The same.

We permit ministers of churches once a week during an interdict, without bells being rung, in a subdued voice, with the doors closed, and with excommunicated and interdicted persons excluded, to celebrate the solemnities of Masses for the purpose of consecrating the body of the Lord, which is not denied to those dying in penance.

Chapter LVIII

Latin source headnote: One making satisfaction to a cleric whom he beat cannot on this account be absolved by the bishop, except in the certain cases expressed here.

The same.

Although one who incurs the canon of a sentence already pronounced on account of a violent laying-on of hands makes satisfaction according to his own means to those upon whom he inflicted injuries, nevertheless he cannot in any other way obtain the benefit of absolution than through the Apostolic See or its legate, unless he is hindered from being able to approach the Roman Pontiff by the imminence of the moment of death, sickness, enmity, or poverty, by boyish or old age, by the frailty of sex or another incapacity of the body, or by any canonical impediment whatever, or unless by a benefit of law he is excused from labor of this kind. Moreover, it has been customary to enjoin certain of the aforesaid persons—namely those who labor under a temporal impediment, except boys—under the obligation of an oath that they are bound to furnish according to the form of the church, that, when the impediment ceases, they are to approach the Apostolic See, humbly to receive its mandate.

Chapter LIX

Latin source headnote: An excommunication rendered without qualification is understood as major. This is what it says, and it is a notable text and is alleged daily.

The same.

If it happens that anyone is excommunicated by his judge under this form of words, "I excommunicate that man," or a similar one, it is to be said that he is bound not only by minor excommunication, which excludes from reception of the sacraments, but also by major excommunication, which separates from the communion of the faithful.

Chapter LX

Latin source headnote: A benefit granted by reason of minority of age, after it has begun to have effect, is not extinguished although the minor has reached majority of age.

The same.

To boys who have incurred the canon of the sentence promulgated, whether they seek to be absolved before or after puberty, the diocesan bishop can impart the benefit of absolution, since on account of the defect of the age at which the offense was committed rigor is to be tempered with gentleness.

Title XL: On the Meaning of Words

Chapter I

Latin source headnote: "Newly broken land" is land newly brought under cultivation.

Jerome, on Hosea.

"Renew the newly broken land." Newly broken land is a field now cut for the first time.

Chapter II

Latin source headnote: Under the appellation of father, in a broad signification, all descendants are included.

The same, on Daniel.

"For King Nebuchadnezzar, your father," that is, great-grandfather, according to the usage of Scripture, which calls grandfathers and those thereafter fathers.

Chapter III

Latin source headnote: He who immediately died is not said to have been born.

The same, in Proverbs.

"For I also was an only-begotten son before my mother." Why does he call himself only-begotten *before his mother*, when Scripture testifies that a uterine brother had preceded him, unless because that brother, having immediately been born without a name, departed from life as though he had never existed?

Chapter IV

Latin source headnote: The expression "before" does not always imply.

The same, on Matthew.

From what is said, "before they came together," it does not follow that they afterward came together; rather, Scripture shows that it had not happened.

Chapter V

Latin source headnote: He who is born first is called the firstborn, even if no one follows him.

The same, in the same work.

"Joseph did not know Mary until she bore her firstborn son." From this passage certain persons most perversely suspect that Mary had other sons also, *saying that one is not called firstborn unless he also has brothers*, since *this* is the usage of the divine Scriptures: that they call firstborn not *him* whom brothers follow, but him who was born first.

Chapter VI

Latin source headnote: Words are to be understood not according to how they sound, but according to the mind of the speaker.

Hilary.

The understanding of sayings is to be taken from the causes for speaking, because the thing is not subject to the expression, but the expression to the thing.

Chapter VII

Latin source headnote: A fact is not vitiated when it is narrated in a different manner, where the same thing is concluded in substance.

Augustine, on Matthew.

Diversity of narration presents no obstacle where the same things are said, especially since each of the evangelists believes himself to speak in that order in which God willed.

Chapter VIII

Latin source headnote: We ought to consider the sense, not the words.

Gregory.

Therefore, if perhaps it should happen that you receive my lengthy epistle for translation, I ask that not word be translated from word, but sense from sense, because very often, while the propriety of words is attended to, the sense of the truth is lost.

Chapter IX

Latin source headnote: It states who properly is a provost.

Isidore.

Although all who preside are rightly called persons placed over others, usage nevertheless has obtained that those who bear a certain care of priority over others are called provosts.

Chapter X

Latin source headnote: It does not admit a fitting summation.

The same, in the Book of Etymologies.

The forum is the place for conducting lawsuits, so called from speaking, or from King Phoroneus, who first gave law to the Greeks. *This place is also called "before the rostra," from the fact that, when the ships of the Carthaginians had been captured in the Punic War, the beaks were taken away and affixed in the Roman Forum so that they might be the emblem of this victory.* The forum, moreover, consists of a cause, a law, and a judgment. A cause is so called from the event from which it comes. For it is the matter and origin of a business, not yet laid open by the examination of discussion; while it is proposed, it is a cause; while it is discussed, it is a judgment [*is*]; while it is concluded, it is justice. Judgment, moreover, is called as it were a declaration of law, and justice as it were the standing of law. Judgment, moreover, was formerly called inquiry, whence we call both the originators of judgments *and* those placed over them quaestors or inquirers. A business [*however*] signifies many things: sometimes the doing of some thing, the contrary of which is leisure; sometimes the action of a cause, which is the quarrel of a lawsuit. And it is called "business" *as though "not leisure,"* that is, without leisure. A business, moreover, is spoken of in causes, but trading in commerce, where something is given that greater things may be gained. A quarrel is so called as though "a chattering about law," because those who plead a cause contend at law. A lawsuit, moreover, first took its name from a dispute over a boundary, concerning which Virgil says: "A boundary had been placed so that it might settle the dispute concerning the fields." A cause consists either of argument or of proof. An argument never gives proof by witnesses, never by documents, but finds the truth by investigation alone, whence *also* "argument" is so called as though "acutely found." Proof, however, consists of witnesses and the faith of documents. In every business also these persons are sought: judge, accuser, defendant, and three witnesses. A judge is so called as though one declaring the law to the people, or because he decides according to law. To decide according to law, however, is to judge justly. Therefore, he is not a judge if justice is not in him. The accuser is so called as though a causator, because he calls to a cause the one whom he accuses. The defendant is named from the thing that is sought, because, although he is not conscious of a crime, he is nevertheless called defendant as long as he is summoned into judgment concerning some thing. In antiquity witnesses were called "survivors" because they were brought forth concerning the standing of the cause; now, with part of the name removed, they are called witnesses. Witnesses, however, are considered by condition, nature, and life. By condition: whether free, not a slave. For a slave often suppresses the testimony of the truth through fear of his master. By nature: whether a man, not a woman. For a woman always produces variable and mutable testimony. By life: whether innocent and upright in conduct. For if good life is lacking, he will lack credibility. For justice cannot have commerce with a criminal man. *There are* [*however*] *two kinds of witnesses: either by stating what they saw, or by bringing forth what they heard. In two ways, moreover, witnesses offend: when they either utter false things or cover true things with silence.*

Chapter XI

Latin source headnote: It states what a pact is and whence it is so called.

The same.

A pact is said to be a writing agreed between parties out of peace, approved by laws and customs; [*and*] "pact" is so called as though made out of peace.

Chapter XII

Latin source headnote: Here Isidore gives the etymology of right as it is found in a thing, not as it is a general name.

The same, in the same work.

Right is so called from possessing by right. For that which is possessed justly is possessed by this right; that justly which well; but that which is possessed badly belongs to another. He possesses badly who either uses his own things badly or presumes upon things belonging to another.

Chapter XIII

Latin source headnote: Whatever a member of the faithful offers to a church is contained under the name of an oblation, and ought not to be possessed by secular persons.

Paschal II, to the Canons of Saint Martin.

The case of the people of Carpi (*And below:*) Moreover, first fruits, tithes, and oblations are reckoned especially among the goods of churches alone. But we call oblations whatever things from their own lawful property are offered to the church by the faithful. Therefore, whoever obtains them through a secular *hand or* power, without doubt strives against God and *against* the sanctions of the holy Fathers; indeed, both he who receives and he who delivers is judged a robber and a sacrilegious person.

Chapter XIV

Latin source headnote: A priest alone can confer the sacrament of extreme unction upon a sick person. This is what it says. - § 1. In a leap year the custom of the place ought to be observed concerning the day on which the feast of Saint Matthias is celebrated, provided nevertheless that the vigil is continuous with the feast. This is what it says.

Alexander III.

Your fraternity asked *of us whether a priest ought to anoint a sick person when only one cleric is present, and on what day the feast of blessed Matthias ought to be observed in a leap year, especially since certain persons wish to interpose a day between the vigil and the feast,* [*and whether a woman, etc.; cf. c.* 2, *On Baptism, IV.* 19.] We therefore have deemed that this is to be answered to you: that a priest, when one cleric is present and even alone, can anoint a sick person. § 1. But let the vigil precede the feast of blessed Matthias according to ecclesiastical custom to the extent that it admits no other day between itself and the solemnity, either on account of the leap day or in any other manner; on that vigil, unless it falls on the Lord's *day*, a fast is to be observed. But whether the feast itself takes place on the preceding or on the following day, which two are reckoned as though one, there is no error, but the custom of the church is to be observed. [*But that a woman on account of theft, etc.; cf. c.* 2, *On Baptism, IV.* 19.]

Chapter XV

Latin source headnote: By the words "I establish and command," a definitive sentence can be rendered.

Celestine III.

In those matters that contain ambiguity, *recourse is owed to the Apostolic See, to which in truth, as mother and head of all churches, greater and more difficult questions, just as was established by the ancient Fathers and rightly approved by the usages of those employing them, ought everywhere to be referred.* For it became known *indeed* to our apostolate that, when *concerning the controversy that* existed *between Master M. and the lay brothers of the Hospital of Saint Simplician concerning that hospital*, in the presence of *our venerable brother O.*, Archbishop of Milan, a question was being litigated, after cognizance of the case the archbishop himself did not use these words in pronouncing the sentence, *so as to say according to civil law*: "I condemn this party," or "I absolve this party," but pronounced thus: "I establish and command," *that henceforth, and the remaining things that are expressly contained in the instrument. Therefore, because, as we learned from the report of our beloved sons Cynthius, Cardinal Priest of Saint Lawrence in Lucina, and John, Cardinal Priest of Saint Prisca, whom we assigned as auditors for this, there was doubt concerning this pronouncement of the sentence:* Considering, therefore, that this word "I establish" *according to the law* signifies a completed thing and is received with effect, not verbally, likewise *that* according to Gregory that which is commanded is ordered, and that which is ordered must be done and sometimes, if it is not done, carries a penalty; considering nevertheless that, *according to the same Gregory*, no one ought to consider the words, but the will *and intention*, since the intention ought not to serve the words, but the words the intention, we interpret *in the present article by the counsel of our brothers*, the proctors of each party being present, and define that the words of the aforesaid archbishop, pronounced in such form, possess the firmness of a sentence to remain perpetually valid. *We therefore confirm by the present page of the Apostolic See the sentence itself, although it has hitherto been impeded by the obstacle of an appeal, and fortify it by the protection of this writing, establishing and commanding by apostolic authority that the aforesaid brothers of that hospital obey its abbot and his grantors in perpetuity as their prelates and lords, just as the archbishop himself commanded.*

Chapter XVI

Latin source headnote: A benefit of a prince ought to be interpreted most broadly.

Innocent III, to the Patriarch of Grado.

We recall that we formerly wrote to you that if the *beloved son the archpriest and* the canons of Padua, *to whom we directed our writings concerning this,* did not confer upon *the beloved son* Master G., canon of Padua, without any delay, the prebend which is conferred from the common property only upon residents, and manual benefices from the common revenues, just as upon one of the others, you were to take care to compel them to this, appeal ceasing. But because, *as was reported to our apostolate*, certain persons attempt to interpret our mandate otherwise than is fitting, since benefits of princes are to be interpreted most broadly, *wishing to remove doubt from our mandate, not to reserve the scruple of a question, so that you may execute what we command more diligently and freely*, we have deemed that our understanding *in this matter* is to be disclosed to you: namely, that we enjoined the prebend which is conferred from the common property only upon residents in food and clothing to be conferred fully upon Master G. himself, just as upon one of the other residents. *Therefore, by apostolic writings we*

command your fraternity that, attending to no malicious interpretation in the business itself, you endeavor diligently to execute, after the obstacle of any contradiction and appeal has been removed, what we command you concerning the aforesaid master.

Chapter XVII

Latin source headnote: An interdict is called general when it is rendered not only against a province, but against a town or castle.

The same, to the Bishop of Coimbra and the other Bishops constituted in the Kingdom of Portugal.

Since in your parts, *sins requiring it*, it often happens that various places are placed under interdict, we have learned that among you it is called into doubt when an interdict ought to be called general or particular. For those who merited being adorned with a privilege by the Roman Church—namely, that when a general interdict of the land has been imposed, it is lawful for them, with the doors closed, bells not rung, excommunicated and interdicted persons excluded, and in a subdued voice, to celebrate divine offices—assert that they are not constrained by a particular interdict, saying *that* interdict alone to be general when a kingdom, or at least a whole province, is subjected to interdict. *On account of this, justice is more often destroyed and the sentences of prelates are held in contempt, since they celebrate divine offices in other provinces under interdict and, while the organs of others are suspended, they themselves, with bells rung and doors open, indiscriminately receive any persons whatever to divine offices.* But since nothing is expressly said in the privileges about a kingdom or province, we will that under the name of land not only a kingdom or province be understood, but also a town and castle, so that in these too that which is said concerning a general interdict has place: namely, that when a town or castle is subjected to a general interdict, the form of the privilege written above ought to be observed. [*Given at the Lateran, the seventh day before the Ides of February,* 1199.]

Chapter XVIII

Latin source headnote: A privilege against a custom opposing the common law is to be interpreted broadly. This is what it says according to the understanding of the ancient abbot, and it is a notable case according to this understanding.

The same, to the Bishop of Auxerre.

Since by the kindness of the Apostolic See it was granted to you that the ordering of the property of clerics dying intestate should remain *freely* in your *power and* disposition, *wishing to remove every occasion of scandal that has sometimes arisen between you and your people concerning two matters*, you wished to consult us, *first,* whether the appellation of the word "clerics" extends as much to canons as to non-canons; *second, whether those who commit their last will to the will and disposition of another, ordering or determining nothing at all by themselves about what ought to be conferred upon what place or person, are said to die intestate. Therefore, to the first* Consultation of yours we respond in this manner: that the appellation of clerics comprehends not only others but also canons. *Concerning the second, etc.* (*cf. c.* 13, *On Testaments, III.* 26.) [*Given at the Lateran,* 1202.]

Chapter XIX

Latin source headnote: One swearing to obey the prelate and the church is bound to obey not the diocesan clergy, but the chapter of the cathedral church.

The same, to the Provost and Chapter of Piacenza.

Since the clerics of Piacenza furnish an oath under this form of words: "I, such a one, from this hour henceforth shall be faithful and obedient to the *holy* church of Piacenza and to my lord, the Bishop of Piacenza," you wished to consult us *by your letters* whether the clergy of the whole diocese or only the chapter of the cathedral church ought to be understood. We therefore respond *to your discretion by the present page* in this manner: that by the word "church of Piacenza" in the form of the oath written above, the clergy of the whole diocese ought not to be understood; and if the chapter of the cathedral church is understood, nevertheless he who furnishes an oath of this kind is principally obligated to the bishop as to the head. [*Given at Ferentino, the sixth day before the Nones of July,* 1203.]

Chapter XX

Latin source headnote: Under the appellation of ecclesiastical censure are comprehended excommunication, suspension, and interdict.

The same, to the Prior of Saint Fridianus at Lucca.

To one asking what ought to be understood by ecclesiastical censure when we place a clause of this kind in our letters, we respond that by it not only a sentence of interdict, but also of suspension and excommunication can be understood, unless the discerning judge, having investigated the circumstances of things and persons, renders that which he shall see to be more expedient.

Chapter XXI

Latin source headnote: In privileges concerning tithes of newly broken lands not to be paid, that is called newly broken land of whose cultivation there is no memory, and which previously brought forth little or no fruit.

The same, to the Bishop of Zaragoza.

Your fraternity asked *of us* what ought to be understood by the word "newly broken land." Although some have said that newly broken land is land cut, which lies fallow for a year, while others assert that land brought under cultivation from a forest after the trees have been uprooted is said to become newly broken land, each of which interpretations is gathered from the civil laws, We therefore respond to your inquiry *in this manner*: that we believe the intention of our predecessors, when they granted to pious places an indulgence concerning newly broken lands, to have been that they understood by newly broken land a field newly brought under cultivation, concerning which there exists no memory that it had ever been cultivated. But neither do we believe that an indulgence was granted to them concerning every such newly broken land, but only concerning that one whose tithe a religious convent can retain without grave detriment to the parochial church, since there is often such uncultivated land from which the parochial church receives great revenues by reason of tithes. [*Given at Viterbo, the eleventh day before the Kalends of September, in the tenth year,* 1207.]

Chapter XXII

Latin source headnote: If a church subject to a bishop is united to another, or is committed to it to be governed, with the right of the mother church preserved, by "mother church" the cathedral, and not the Roman Church, is understood.

The same, to Abbot F. and B., Monks of Alcobaça.

We learned, from our venerable brother the Bishop of Coimbra complaining, that, when the brothers of the Holy Cross recently received under their protection the monastery of Argar, which had been accustomed from ancient times to exhibit episcopal rights to his predecessors, now, after one of their canons had been made prior there without his consent, on the occasion of a certain privilege obtained from Pope C. *of good memory, our predecessor*, with the truth suppressed, it denies that it should exhibit *due* obedience to that bishop, taking from this the occasion that by "mother church" it understands not the cathedral but the Roman Church. *But because it is not our intention that the rights of our brothers in our times* [*unduly*] *be diminished, we have deemed that the case itself should be committed to you.* Therefore, *by apostolic writings* we command that, if nothing else occurs to you on account of which the said prior ought not to answer to the diocesan bishop, you compel him by ecclesiastical censure to furnish that obedience to him just as his predecessors furnished it to the predecessors of the bishop, notwithstanding the privilege obtained by surreption to the prejudice of the Church of Coimbra. For we will that by "mother church" the cathedral church be understood, not the Roman Church. [*But if not all, etc. Given at Rome, the third day before the Kalends of June,* 1198.]

Chapter XXIII

Latin source headnote: One excommunicated or interdicted for contumacy or a doubtful offense is absolved after security has been furnished that he will stand by the law. But if he was excommunicated or interdicted for a manifest offense, then he ought first to make satisfaction before he is absolved. And that is called manifest which is established through confession, lawful proof, or the evidence of the thing. This is what it says, together with the following chapter.

The same, to the Abbot of Saint Geneviève, and the Dean and Chancellor of Paris.

On behalf of the beloved daughter in Christ, *the noble woman* the Countess of Blois, those *sent to our presence sought that a hearing be exhibited to her, so that we might hear the injuries that the Church of Chartres inflicts upon her and her people; to them, and to the beloved son S. de Bero, canon of Chartres, who stood for that church, we gave as auditor the beloved son R., cardinal priest of the title of Saint Anastasia. In his presence* the envoys of the countess Alleged that, when the provost *of the countess of La Ferté in the town of Nolis* had seized a certain robber *who had committed theft*, and justice had thereupon been done, the robber was demanded *from the bailiffs of the countess* by the chapter of Chartres after justice had been done, because they said that he had been captured in their land; *the bailiffs asserting to the contrary that he had been captured in land in which the same countess has the right to capture robbers and other malefactors, because her husband, before he assumed the sign of the cross, was in possession of that right, so that in the place in which the chapter itself said that the robber had been captured, he possessed jurisdiction of this kind; which they were prepared to prove.* But when the countess offered security concerning this that she would obey the law, the canons of Chartres nevertheless caused her land to be placed under interdict, which they were unwilling to relax unless amends were first paid. *Thereafter our venerable brother the Bishop of Chartres, having been requested concerning this and diligently admonished by letters of his metropolitan that he absolve the*

land of the countess in such manner as by law he could and ought, refused to do this, having been prohibited by the aforesaid chapter. For they said that *this* was contained in the privileges of the Church of Chartres: that it was lawful for no one to grant the benefit of absolution without fitting satisfaction to persons excommunicated or expressly interdicted on behalf of the canons of Chartres. *But the envoys of the countess, seeing that after security had been given they could not be absolved as they ought, appealed to the hearing of the metropolitan concerning this as well as other cases litigated between the countess and the chapter, placing both the countess herself and her land and bailiffs under his protection.* [*Meanwhile the Dean of Châteaudun addressed the provost of the countess at Châteaudun so that he would take care to return or restore on security the property of a certain man that he had seized. When he was prepared to restore it on security, the dean, after first inspecting certain letters that he had received on behalf of the chapter of Chartres, was unwilling that the provost himself restore that property on security, but that he return it absolutely. The provost, unwilling to do this lest the right of the countess perish in this matter, prohibited the dean from proceeding further and sent forth a voice of appeal to the hearing of the metropolitan, placing the land of the countess and her bailiffs under his protection and fixing a day for the appeal. But on the next day the dean, just as he had addressed the provost, addressed the castellan of Châteaudun, who, after giving him a similar response, appealed, promising with the provost himself concerning this to stand by the mandate of the church. But the dean, asserting that he had received a mandate from the chapter, placed that castle under interdict in the evening. Therefore, when the parties had been cited by the metropolitan and constituted in his presence, the proctor of the aforesaid countess, complaining on her behalf, alleged that the chapter of Chartres so aggrieved her, although she had not been cited or requested in anything, that it repeatedly placed her land under interdict for any cause whatever without requesting her in any way. He also complained that, when she herself or her bailiffs were cited in the cases of the chapter to answer before the ordinary judge, they were now compelled to answer in the chapter; and that, when the castle of La Ferté had been unjustly placed under interdict, they were unwilling to receive from her the sufficient security to obey the law that she offered, although she was also prepared to prove that she had exercised her own right. They complained further that Châteaudun had been interdicted after the appeal, and she offered suitable proof that in seizing the aforesaid property the countess had exercised her own right, namely that right in whose possession her husband was at the time when he assumed the cross. Furthermore, when certain witnesses had been received concerning this at Paris by the metropolitan, and the proctor of the countess insistently sought that he absolve the land after sufficient security had been received, the proctor of the chapter said to the contrary that it was lawful neither for the metropolitan nor another to absolve the land, alleging the tenor of the aforesaid privilege and wishing to produce witnesses concerning this, just as the countess had produced them. Therefore, another day having been assigned to the parties at Noliacum so that they might produce witnesses and exhibit the privilege,*] *The metropolitan, when the parties were present on the appointed day, having diligently inspected the privilege, received witnesses on each side. After they had been examined by an official of the metropolitan and another day assigned to the parties, the proctor of the countess insistently sought that the depositions received be published, offering abundantly sufficient security to obey the law, so that the sentence of interdict might be relaxed. But the proctor of the chapter alleged to the contrary that by reason of the aforesaid privilege the land could neither be nor ought to be absolved by him unless amends had first been made to the chapter, interpreting that expression contained in the privilege, namely "fitting satisfaction," as amends. Therefore, after litigation at length concerning a clause of this kind, the aforesaid metropolitan pronounced interlocutorily that he wished to reserve an exposition of this kind to apostolic examination, and concerning this assigned a day to the parties.* [*Nevertheless, by reason of the aforesaid appeal, he wished to take cognizance by himself or by his official whether those castles had been interdicted unjustly or lawfully. Therefore, when the proctor of the aforesaid countess pressed that, after security had been received and the depositions published, the sentence of interdict be relaxed, the*

aforesaid Simon, with the proctor of the chapter, sought delays so that they might produce other witnesses to prove that what they had done was just. When these had been granted to him, the proctor of the countess, pressing on the day assigned to the parties concerning this, as he had done more often, sought that the depositions be published and the sentence of interdict relaxed, after security had been received. But the proctor of the chapter, having been asked whether he wished to show through proof before the officials of the aforesaid metropolitan that what the chapter had done concerning this was just, constantly asserted both that he wished to prove nothing and that he would not hear the depositions of the adverse party; but he appealed lest they absolve the land, fixing as the term of his appeal the octave of blessed Martin most recently past. The officials, indeed, attending that an appeal of this kind was not to be deferred to, after receiving security up to one hundred marks to obey the law, absolved the aforesaid land. Therefore the aforesaid Simon, since he did not have the letters of procuration, after assigning as sureties the beloved sons the Abbot of Saint John de Valeta and Thomas, Archdeacon of Dreux, to be condemned in the penalty of one hundred marks if the chapter were unwilling to hold ratified what he himself should do, alleged to the contrary, asserting that, when the aforesaid castles had been interdicted on behalf of the chapter of Chartres, it had been alleged before the metropolitan on behalf of that chapter that by reason of that clause, which is expressed above, he could not and ought not to absolve the land interdicted on their behalf; on account of which he reserved the interpretation of that clause to apostolic examination, but, wishing to take cognizance whether the interdict had been rendered justly or unjustly, assigned a day to the parties. But when the same metropolitan was on the point of coming to the Apostolic See, Master I., his official, whom he had deputed as auditor over the business brought before him, was challenged as suspect by the proctor of the chapter on account of manifest causes which he did not believe to be unknown to the metropolitan himself; but the metropolitan did not remove him altogether from the case, but rather joined to him the Archdeacon of Autun, no mention then having been made of joining another, the parties being present and the archdeacon present and furnishing consent through silence. But afterward the same metropolitan, in place of the archdeacon, as was said by the other party, joined Geoffrey, canon of Sens, if the archdeacon could not be present. Whence the proctor of the chapter, seeing the aforesaid master, who had been challenged, and the said Geoffrey, whom he did not know to have been joined in place of the archdeacon, sitting to take cognizance of the case, asserted that in the absence of the archdeacon he was not bound to answer or make allegations, and contradicted those wishing to proceed without him, interposing a voice of appeal to the Apostolic See. And since it was not lawfully established that Geoffrey had been substituted in place of the archdeacon—through whom the suspicion of Master I. also would not have been suppressed—nor was it canonically manifest that the archdeacon could not be present, those men, namely Master I. and the said Geoffrey, in contempt of the appeal, relaxed the sentence of interdict after receiving security, contrary to the tenor of the privilege of the Church of Chartres and to the prejudice of the interpretation for which the assigned day was pending. Whence the same Simon said that whatever had been done by them concerning this ought to be revoked as void. But the proctors of the aforesaid countess sought that it be opened to them through apostolic interpretation what fitting satisfaction is or how it is to be understood, since on the occasion of this word the canons of Chartres place the land of that countess under interdict when and how they will, and are unwilling that the sentence be relaxed until amends proceed. Moreover, although the countess herself is present in the town that they wish to place under interdict, she is nevertheless neither summoned by them nor lawfully cited; rather, when it pleases them, they summon the provost or one of the bailiffs, saying to him: "Either you will do thus, or we will place the land under a sentence of interdict." And when it is alleged to them on behalf of the countess that what they seek pertains to the jurisdiction of the countess, and they offer to stand by the mandate of the church, they nevertheless interdict the land. And if at any time someone on behalf of the countess is cited by the ordinary judge concerning this on account of the complaint of the chapter, they do not permit him to answer except in the chapter of Chartres. Whence the proctors themselves sought that justice be exhibited to the countess concerning

these grievances and others. We therefore, having diligently heard these and other things that were alleged before the cardinal himself, because it was not established for us whether the appeal was lawful, command your discretion by apostolic writings that, after the parties have been convoked and witnesses received on each side, since the production of witnesses has not yet been renounced on either side, you take care sufficiently to examine the case itself and, with the obstacle of appeal removed, terminate it with a canonical end. But if the chapter is unwilling to hold the act of Simon ratified, by our authority, with the obstacle of appeal removed, you are to condemn the aforesaid sureties to the penalty named and cause what you shall establish to be firmly observed through ecclesiastical censure, reducing to a void whatever was wrongly attempted against the countess herself on behalf of the chapter after her envoys undertook the journey to come to the Apostolic See.] But for understanding the clause of the privilege mentioned, we believe a distinction is to be made whether a sentence of interdict or excommunication was rendered against someone for contumacy alone, namely because, when cited, he was unwilling to stand by the law, or also for an offense, namely because, when commanded, he was unwilling to amend the wrongful act. In the first case we believe that fitting satisfaction is made for a sentence *of this kind* to be relaxed if sufficient security to stand by the law is first given; but in the second *case*, if the offense is manifest, we do not believe that fitting satisfaction is made for the sentence to be relaxed unless sufficient amends are first furnished. But if the offense is doubtful, we believe that competent security for obeying the mandate of the church suffices for relaxing the same sentence. [*But if, etc. Given at Rome on the Kalends of April, in the eighth year,* 1205.]

Chapter XXIV

Latin source headnote: It is summarized in the preceding chapter above; or say: that is called manifest which is established through confession, lawful proof, or the evidence of the thing.

The same, to the Countess of Blois.

Since formerly on behalf of the canons of Chartres a certain chapter was alleged against you, which they said was contained in the privileges of their church—namely, that it is lawful for no one to grant the benefit of absolution, without fitting satisfaction, to persons excommunicated or expressly interdicted on behalf of the canons of Chartres—[*because it was brought into question what fitting satisfaction would be, we recall that, for understanding that clause, we made a distinction whether a sentence of interdict or excommunication had been promulgated against someone for contumacy alone, namely because when cited he was unwilling to stand by the law, or also for an offense, namely because when commanded he was unwilling to amend the wrongful act; believing in the first case that fitting satisfaction was made for a sentence of this kind to be relaxed if sufficient security to stand by the law were furnished; but in the second, if the offense were manifest, saying that fitting satisfaction was by no means made for the sentence to be relaxed unless sufficient amends were first exhibited; and if perhaps it were doubtful, deeming it sufficient for relaxing the same sentence if fitting security for obeying the mandate were furnished.*] But because, while we loosen a handle, we are not yet said to have bound, on account of the fact that, when those same canons allege, as you assert, that offense to be manifest, it appears manifest not to the judge nor to another but to themselves alone, *a greater scruple of a question arose from that expression, namely "manifest"; inclining to your humble prayers*, we write back that we understand that offense to be manifest which has become known either through confession or lawful proof, or [*even*] by the evidence of the thing, which can be concealed by no evasion. [*Given at the Lateran, the eighth day before the Kalends of June, in the tenth year,* 1207.]

Chapter XXV

Latin source headnote: The words of privileges ought to be understood so that they assert something and no ambiguity remains; and therefore the words "according to" and "in accordance with" appear to have been added causally, not conditionally. This is what it says, according to Panormitanus.

The same, to the Bishop and Cantor of Arras.

When the abbot of Saint Silvanus at Auchy had *formerly* entered the way of all flesh, and the monks of that place had elected as abbot a certain person from the bosom of that church, but had been unable in any way to obtain confirmation of *that* election from the Bishop of Thérouanne *of good memory*, they sought it from the Apostolic See *through their proctor*. But the proctor of the monastery of Saint Bertin proposed to the contrary that, since according to approved custom and privileges of the Roman Pontiffs the abbots of Auchy ought always to be taken from the monastery of Saint Bertin, an election of this kind was deservedly to be disapproved, as attempted against long-standing custom and against a privilege of the Apostolic See, and the monks of Auchy ought by law to be compelled to elect for themselves as abbot a suitable person from the monastery of Saint Bertin. (*And below:*) We therefore, having diligently inspected the depositions of witnesses *produced before judges delegated by us*, found it to be *sufficiently* proved that for forty years and less the monks of Auchy had elected for themselves an abbot from the monastery of Saint Bertin, *in such manner that within the span of the time written above seven persons were taken from the aforesaid community as abbots of Auchy.* (*And below:*) And when on a certain occasion they had elected Guarin, a monk of Auchy, his election could have no force until, after profession had been made at the monastery of Saint Bertin, after some time, namely when it pleased the abbot and convent of that place, he was taken as abbot of Auchy. From the privileges of the Roman Pontiffs *granted to the monastery of Saint Bertin* it could also be argued *evidently* that the abbot of Auchy was to be elected from the college of Saint Bertin. For in a privilege of Pope Paschal *of happy memory, our predecessor*, a chapter of this kind appears inserted: "We grant that the substitution of the abbot among the monks of Saint Silvanus at Auchy shall always remain in your disposition in accordance with the custom of past time," *to whose words Pope Innocent of good memory, our predecessor, adhered completely.* In a privilege of *Pope Calixtus II*, a chapter of this kind is also found: "Moreover, in accordance with the decree of Pope Paschal, *our lord predecessor of holy memory*, by apostolic authority we decree that the substitution of the abbot among those of Auchy be made from nowhere other than your monastery." But to this the opposing party responded that, even if it were proved *evidently through the depositions of witnesses* that within the aforesaid span of time the abbot of Auchy had always been taken from the monastery of Saint Bertin, nevertheless *no prejudice was thereby prepared for the monks of Auchy, since this was done from no necessity, but from free will.* (*And below:*) *But* it could not be said that *from this* some custom had been introduced as though by a contradictory judgment, since in the election of the aforesaid Guarin the proceeding is known to have taken place in such a manner outside judgment for the sake of peace. (*And below:*) Moreover, since Pope Paschal deemed that the substitution of the abbot of Saint Silvanus should be granted to the monastery of Saint Bertin in accordance with the custom of past time, and proof is not made concerning the custom of past time *or usage*, no prejudice concerning this could be generated for the monastery of Auchy by his privilege and similar ones. To this it was answered to the contrary that this determination, "according to the custom of past time," can be understood both causally and conditionally, and can be referred as much to a personal as to an impersonal verb. For if it determines the impersonal verb, it is understood

conditionally, and *such* is the sense: "We grant that the substitution of the abbot of Saint Silvanus at the monastery of Auchy shall always consist in your disposition, according to the custom of past time," that is, if the custom of past time was such. But if it determines the personal verb, it ought to be understood causally, so that the sense is: "We grant according to the custom of past time," that is, because the custom of past time so obtained, that the substitution *namely of the abbot of Saint Silvanus at Auchy shall always consist in your disposition.* But this sense appears more correct, because, since a privilege is a private law, and a law ought not to be obscure or captious but certain and manifest, and it would not be private unless it granted something specially, those words assuredly are to be so understood that the matter at issue can be valid rather than perish; especially since the aforesaid Pope C., who succeeded that Paschal as his nearest neighbor, using more equitable words, removed that determination completely so that ambiguity might be removed, and changed what was said in the grant of Paschal—namely, that the substitution of the abbot of Saint Silvanus among those of Auchy should always exist in the disposition of the abbot and brothers of Saint Bertin—decreeing that the substitution of that abbot was to be made from nowhere other than the monastery of Saint Bertin, *so that the election could on one side indeed be reduced to the common law. The subsequent custom, which is said to be the best interpreter of laws, also declares that these same words are to be interpreted in this manner.* Therefore, having diligently heard *these and other things pertaining to the same case*, and *having understood them perspicaciously, by the counsel of our brothers*, we adjudged a dignity of this kind to the monastery of Saint Bertin: that whenever an election of an abbot is imminent in the monastery of Auchy, the monks of Auchy are to elect for themselves as abbot a suitable person from the community of Saint Bertin; namely in such manner that the monastery itself ought to enjoy this prerogative of honor for so long as regular observance flourishes there, so that suitable persons who can be taken as abbot are found in it. [*Therefore, the election, etc. Given at the Lateran, the second day before the Kalends of May, in the twelfth year of our pontificate,* 1209.]

Chapter XXVI

Latin source headnote: It states who are called manifest heretics. Second, what tolls, escort fees, and salt dues are interdicted. Third, it is stated how the precept made to a layman—that he answer those complaining of him in the ecclesiastical forum—is understood. This is what it says.

The same, to the Count of Toulouse.

Since doubt arose among certain persons concerning some articles of the mandates *made to you by Milo of good memory, our notary, then legate of the Apostolic See*, your devotion sought from us who are to be called manifest heretics. Concerning this we have deemed that it should be answered to you that *in this case* those are understood to be manifest heretics who publicly preach against the catholic faith, or profess or defend their error, or who have been convicted or confessed before their prelates, or have been condemned by sentence by them concerning heretical depravity; their own goods are confiscated and they are punished according to lawful sanctions. Moreover, since the legate mentioned interdicted to you tolls, escort fees, [*and*] salt dues, we have deemed that it should be declared by apostolic authority that those tolls, salt dues, [*and*] escort fees are interdicted that do not appear to have been granted by the largess of emperors or kings or of the Lateran Council, or to have been introduced by ancient custom from a time of which no memory exists. (*And below:*) But since you received in mandate from the legate that you exhibit justice to those complaining of you according to his judgment or that of another legate, an ordinary judge, or [*even*] a delegated judge, we

determine that this is to be understood in such a manner that in every case which by reason of persons or things pertains to the ecclesiastical forum, and concerning all the chapters that were established for preserving peace by the *already* mentioned legate, or are to be established by apostolic authority, likewise to widows, wards, orphans, and miserable persons, you are bound to answer in an ecclesiastical judgment. [*We will moreover, etc.; cf. Comp. IV, c.* 1, *On Census, IV.* 18. *Given at the Lateran, the tenth day before the Kalends of February,* (?) 1210.]

Chapter XXVII

Latin source headnote: A cleric is delivered to the secular court because he is degraded with the secular power present, to which it is announced that it is to receive him into its forum. This is what it says, as far as § "But concerning that man." - § 1. This section does not pertain to the title, but according to some it states an act of grace.

The same, to the Bishop of Paris.

We know that it is expedient that we explain more openly that expression which is contained [*both*] in the ancient canons and in our decree *also* issued against forgers—namely, that a cleric degraded by an ecclesiastical judge is to be delivered to the secular court to be punished. For since certain of our predecessors, when consulted concerning this, gave different answers, and the opinion of certain persons is approved by more persons, that a cleric who has been degraded on account of this or another grave disgrace, not only damnable but harmful, is consequently attached to the secular forum as one stripped of clerical privilege when he has been cast out from the ecclesiastical forum, his degradation is to be celebrated with the secular power present, and it is *to be* pronounced to it, when the degradation has been celebrated, that it receive the degraded person into its forum; and thus he is understood to be delivered to the secular court. Nevertheless, the church ought efficaciously to intercede for him that the sentence concerning him be moderated short of danger of death. § 1. But concerning that criminal forger whom you caused to be captured at our mandate, we have deemed that you should be counseled to confine him in perpetual prison to do penance, to be sustained on the bread of sorrow and water of distress, so that he may bewail the things committed and not further commit things to be bewailed. [*Given at the Lateran, the fourteenth day before the Kalends of March, in the eleventh year of our pontificate,* 1209.]

Chapter XXVIII

Latin source headnote: If the Pope grants to a defendant, who on account of the absence of the plaintiff cannot recover possession, that the lapse of a year not prejudice him, this indulgence is understood according to the common law.

Honorius III, to the Archbishop of Tours.

The beloved son James Barba, *proctor of the Church of Saint Mark of Venice, having formerly humbly supplicated us that, since he was prepared to exhibit to you the fullness of justice concerning the Church of Saint Mark of Tyre and other things about which a question was moved between you and the Venetians and the vicar of the Venetians, we cause the possession of that church—which by Pope I. of happy memory, our predecessor, was assigned to you for the sake of custody—to be restored to him*, Because, while you were then absent for a necessary cause, the possession delivered to you for the sake of custody could not be restored to the adverse party, *we* granted to him that the lapse of time should not obstruct him from being able to recover

that possession. But since so much time is said to have elapsed before the grant of that indulgence that it could suffice for you to produce the effect of true possession according to the statutes of the general council, *and, if perhaps that time had not elapsed before the aforesaid indulgence, it appears that the same indulgence closes to you the way to true possession, since it is simply contained in it that henceforth the lapse of time is not to obstruct that proctor from being able to recover the possession mentioned, we, whose intention it was to assist the right of the said proctor and that church without injury to you and your church*, By the authority of the present letters declare that it was not our intention through that indulgence to extinguish the right that belongs to you from past possession or, after your return, shall belong to you from future possession. For the adverse party will be able to impute it to itself if it has been negligent in prosecuting its justice, since, when the impediment of your absence ceased, it had the faculty of convening you.

Chapter XXIX

Latin source headnote: Under the name of an oblation is understood whatever is offered to a church in any manner, at Mass or outside it, and in a church or outside it.

The same, to the Prior and Clerics of Saints John and Paul at Todi.

When a question was formerly litigated between you on one side and the abbot of Saint P. of Monte in the Diocese of Spoleto on the other concerning the third part of the oblations *and possessions* of the chapel of Saint Hilary, *and of its cells and certain other things, before Angelo of good memory, cardinal deacon of Saint Andrew, then subdeacon and chaplain of Pope I. of happy memory, our predecessor, granted by the same predecessor as auditor to the parties*, and it had been proved by you that for forty years and more your church had received the third part of the oblations of that chapel from the clerics instituted by the abbot of Monte, and that he had sometimes committed that same third to you, son prior, to be collected, Pope I. of good memory, our predecessor, adjudging that third to your church, established that it was lawful for you, prior, to collect through those clerics, as had been customary, the part mentioned, *as we saw to be contained in the letters of the same predecessor*. But because afterward the priest of the aforesaid chapel—asserting that under the name of oblations were by no means contained those things that on the feast of All Saints are sent to that chapel or carried to it or to the house of that priest with a view to the dead; nor those things that are placed in the treasury, which he takes from the altar and causes to be carried through the church *fraudulently by someone*; and those things before the cross and at the Mass of the Trinity; and those things given for the betrothed; and lamps with oil that are offered to the aforesaid chapel by certain persons; or things that are given to the messenger who is sent through the parish of the aforesaid chapel to receive such things—*and* denying that the third part of all these should be exhibited to you, endeavored, from other things to be paid under the name of the third part, to retain proportionately what touched your church for making the necessary expenses of the chapel itself, the said predecessor, *that every occasion of scandal might be removed, willed and commanded that the third portion be paid integrally, without any subtraction, both* from all the things stated above *and from oblations and other things*. But the chaplains of the aforesaid chapel, *wishing still to raise the tinder of another defense, and* saying that first fruits and tithes, or those things offered to priests for Masses for the dead, and things for seventh days, thirtieth days, and anniversaries, breads and other things offered within the week, and testamentary dispositions of the dead, are by no means contained under the name of oblations, are unwilling to pay you the third part of all these things. We therefore will and command that, through your cleric instituted by you in the

same church, from all the things stated above and *from* other oblations, by whatever title they have come to the *same* church, the third portion be paid to you integrally without any diminution.

Chapter XXX

Latin source headnote: A lawsuit is said to have been moved when issue has been joined.

The same, to Bishop F. and B. Bertrandi.

It was proposed on your behalf *before us* that the *beloved sons*, the provost and canons of Arezzo, endeavoring by *a sinister interpretation* to lead back into the scruple of a renewed question the sentence that Pope I. *of happy memory*, our predecessor, promulgated concerning *the Church of Saint Gregory, certain lands and part of the mills of Cuprene and of Castrosaxo and* the mill *situated above the bridge* of Calianen., and other *various* articles *comprehended in that sentence, between you and their canonry*, assert that the chapter of that sentence in which it is said that the canonry itself is not to impede your monastery from being able to rebuild the aforesaid mill of Calianen. in that condition in which it is known to have been at the time of the lawsuit moved, is to be referred to the time when a little stone was cast in denunciation of a new work; while you assert to the contrary that it is to be understood of the time when issue was joined concerning this between you and the aforesaid canonry. *Therefore, you humbly supplicated that we deign to decide an altercation of this kind by an interpretation of the chapter stated above*. We therefore, having *diligently* considered the same sentence, interpret what is said in the aforesaid chapter concerning the time of the lawsuit moved to be referred to the time when joinder of issue was made.

Chapter XXXI

Latin source headnote: A constitution of a legate concerning the third part of mortuaries to be paid to the bishop ought to be understood of those mortuaries in which it is owed by common law.

The same, to the Prelates of the Community of the French at Constantinople.

It was proposed on your behalf *before us* that your patriarch, *our venerable brother*, on the occasion of a certain constitution that *our venerable brother* the Bishop of Albano, then legate *of the Apostolic See* in the parts of Romania, issued concerning the legacies of the deceased, and which the beloved son I., cardinal priest of the title of Saint Praxedes, renewed while he discharged the office of legation there, unduly exacts from you a third *part* of certain things that are bequeathed by dying persons to you and your churches. Therefore, since they, as we learned from their interpretation, did not understand that any portion ought to be paid to the cathedral church from those things that are bequeathed in ecclesiastical ornaments, or for the fabric of a church in need of repair, or for the lights of the church, nor *also* from those things that are bequeathed for an anniversary, seventh, thirtieth, and twentieth day to be performed, or from those that are bequeathed by anyone to persons specially, unless perhaps this is done by reason of the church, we, holding their interpretation ratified, command that the aforesaid constitution be observed according to it, firmly prohibiting anyone from fraudulently procuring anything in the aforesaid matters to the prejudice of the cathedral church.

Chapter XXXII

Latin source headnote: In a privilege concerning receipt of the fruits of benefices, the appellation of benefices comprehends even greater benefices when the privilege is granted to a bishop for an

honorable and favorable cause. This is what it says, with the supplement of Panormitanus.

The same, to the Bishop of Toulon.

Your fraternity intimated to us that, since for the relief of the burden of debts *by which you are oppressed* we deemed that it should be granted to you that it be lawful for you to retain for two years the fruits of benefices that happen in the meantime to become vacant in your diocese, certain persons, endeavoring by a sinister interpretation to restrict the privilege of apostolic grace, assert that prebends and greater benefices are by no means contained under the name of benefices; *concerning this you sought an apostolic interpretation.* We therefore, *rejecting the opinion of interpreters of this kind*, declare by the authority of the present letters that in this case prebends and other benefices are contained under the general name of benefices.

Chapter XXXIII

Latin source headnote: The word "moderation" contains diminution, not augmentation.

Gregory IX, to the Dean and Sacristan of Engo.

The letters transmitted to us contained that, when the bishop and chapter of Saintes signified that the number of forty canons instituted in their church could not be observed because the resources of the church did not suffice, we gave you in mandate that, moderating the number of canons and prebends in accordance with the resources of the church, you establish that it be firmly observed. But you found that the resources of the aforesaid church had increased so greatly from the time when the number was established that a greater number could be maintained in it without mutilation of the prebends; therefore you asked whether by the word "moderation" added to our letters you ought to augment or diminish that number. Therefore we command that, if the old prebends have not been diminished, since moderation has no place, you leave their number and the number of canons in the same condition in which it is known to have existed hitherto, converting the increase of their revenues to the benefit of that church until we deem that it should be disposed otherwise.

Title XLI: On Rules of Law

Chapter I

Latin source headnote: It cannot be summarized more briefly.

John Chrysostom.

Every thing, through whatever causes it comes into being, is dissolved through the same causes.

Chapter II

Latin source headnote: Doubtful things ought to be interpreted in the better part.

Bede, in the Homilies.

"Be merciful, etc." In this passage I judge that nothing else is commanded to us except that we interpret in the better part those deeds concerning which it is doubtful with what intention they are done. For what is written, "From their fruits you shall know them," was said of manifest things that

cannot be done with a good intention, such as fornication, blasphemies, thefts, drunkennesses, and similar things, concerning which we are permitted to judge.

Chapter III

Latin source headnote: Truth is not to be omitted in order to avoid scandal.

The same.

"He who shall cause scandal, etc." It is more useful that scandal be permitted to arise than that truth be abandoned.

Chapter IV

Latin source headnote: On account of necessity an unlawful thing is made lawful.

The same, on Mark.

Necessity makes lawful what is not lawful by law. For the sabbath also was commanded to be observed; nevertheless the Maccabees fought on the sabbath without fault of their own. So too today, if a sick person breaks a fast, he is not held guilty of his vow.

Chapter V

Latin source headnote: A thing done unlawfully induces an obligation.

Gregory VII.

What has been introduced secretly, or through force, or otherwise unlawfully, ought to subsist with no stability.

Chapter VI

Latin source headnote: Tortures are not to be inflicted without judgments preceding.

The same, to the Bishop of Varia.

When in contemplation (*And below:*) At the very beginning of the case, one is not to begin with tortures.

Chapter VII

Latin source headnote: He who offends an ecclesiastical thing or person is sacrilegious.

Pope Stephen.

Those things which are frequently *usurped must more frequently be repeated and prohibited. For* Whatever is done unjustly against things consecrated to God and against bishops is reckoned as sacrilege, because they are sacred and ought not to be violated by anyone.

Chapter VIII

Latin source headnote: He who does otherwise than he ought is not said to do.

Augustine.

He who performs a precept from fear performs it otherwise than he ought, and therefore now does not perform it.

Chapter IX

Latin source headnote: One committing one sin is guilty of all as regards eternal life.

The same, in the Book on Penance.

Let the sinner bewail that, offending in one, he has been made guilty of all [*through ingratitude*].

Chapter X

Latin source headnote: Ignorance does not excuse a prelate concerning the sins of his subjects. This is what it says as regards the mystical and moral understanding.

Gregory, in the Register.

Although the consideration of the case [*moves me, nevertheless charity also impels me to write, because both once and twice I wrote to my most holy brother, Lord John, but I did not receive his letters. For another secular person spoke to me under his name; and if those were his letters, I was not watchful, who believed concerning him far otherwise than I found. For I had written concerning the case of the most reverend man John the priest, and concerning the questions of the monks of Isauria, one of whom, also constituted in the priesthood, was beaten with rods in your church; and your most holy fraternity wrote back to me, as I recognize from the name of the epistle, that he did not know concerning what case I was writing. At this reply I was greatly astonished, silently revolving with myself whether he speaks the truth.*] *What can be worse than that such things are done against the servants of God, and he himself, who is at hand, does not know?* For *indeed* there can be no excuse for the shepherd if the wolf eats the sheep and the shepherd does not know. [*But if your holiness knew, etc.*]

Chapter XI

Latin source headnote: Homage is not furnished for spiritual things.

Lucius III.

It is unworthy and foreign to the custom of the Roman Church that anyone be compelled to do homage for spiritual things.